

A N
INTRODUCTION

To the Knowledge of the
STILE OF WRITS,
SIMPLE AND COMPOUND,
MADE USE OF IN SCOTLAND:

CONTAINING

DIRECTIONS for drawing SECURITIES, in Cases which most commonly occur, with EXAMPLES according to the best modern Practice, with historical Notes, serving to explain and illustrate the Words and Phrases used in these Writs.

By JOHN SPOTTISWOOD OF SPOTTISWOOD, Advocate.

TO WHICH ARE ADDED

BY WAY OF APPENDIX,

I. General Observations on several FORMS of WRITINGS, and LETTERS of DILIGENCE.

II. Regulations respecting ordinary and civil Actions, and criminal Causes, in the Sheriff and Stewart Courts of SCOTLAND.

III. The Fees of Clerks, &c. in these Courts, both in civil and criminal Cases.

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and J. BROWN.

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TO WHICH ARE ADDED

BY WAY OF APPENDIX

THE FOLLOWING

AND A LIST OF

Printed for A. Knapton and J. Bate, W. Gower

and J. Bate

MILNER

To the PUBLIC.

THE continual demand for this Treatise on the **STILE** OF **WRITS**, having exhausted all the former editions, we thought a new impression, with several valuable additions, would be acceptable to the Public.

The last impression, printed in the year 1752, had several material alterations and additions; such as, Charter Parties, Bonds of Bottomry, Policies of Insurance, Table of Annuities for Tack-duties, for any number of years under fifty, with all the alterations made in our law relative to Wardholdings, single and liferent Escheats, and heritable Jurisdictions.

To render this book still more useful, besides all the above improvements,
there

To the PUBLICK.

there are added, (by way of Appendix) some judicious Observations on several Forms of Writings, and Letters of Diligence; likewise, the Regulations to be observed in the Sheriff and Stewart Courts of *Scotland*, in Civil and Criminal cases, with the Fees and Dues of clerks and other officers in these courts, as regulated by act of sederunt 16th *March* 1748, and act of adjournal the 21st of *March* the same year.



(1)

A N

INTRODUCTION

T O

*The Knowledge of the Stile of Writs,
simple and compound, made Use of in
SCOTLAND.*

SEEING none can fully understand or
surely practise the law, unless they
know the Form and Nature of Writs
and Securities; therefore, an Explan-
ation thereof ought to be made to the Stu-
dents of the Laws.

These Writs are either Judicial, or Extra-
judicial.

Judicial, are these which relate to Proces-
ses, as the Claims, Libels, Summonses, Peti-
tions, Answers, Exceptions, and Defences of
Parties, with the Sentences and Orders of the
Judges upon them, &c.

Extra-judicial Writs, are these which are
perfected out of Judgment; but more chiefly
such as declare the voluntary Agreement of
Parties, their Bonds and Obligations, and con-
veyances, Acquittances and Discharges. &c.

A

whether

whether the Subject and Matter mentioned therein be depending in Judgment and Plea before any Court, or not.

The first and most frequent of Extra-judicial Writs, is a Bond or Obligation, which may be called, The Foundation and Ground of all others: For Bonds occasion other Securities, and upon them Diligences, Action, Execution, are founded, and the Conveyance of all these give Rise to many various Forms of Writs.

Not troubling you with the nice Definition and Division of Bonds given by the Emperor *Justinian*, and the Doctors of the Civil Law, let it suffice, at this Time, to tell you, That by a *Bond or Obligation*, is here meant a *formal Writing on stamped Paper or Parchment, duly signed, whereby a Person acknowledges himself to be owing and addebted to another a certain Sum, or other Thing, and obliges himself to pay the Money, deliver the Thing, or perform the Deed.* In which Obligations, besides the Parties Names, are to be considered the Sum, Thing, or Deed due; the Time, Place, Manner of Payment, Delivery, or Performance; and sometimes a Sum, in Name of liquidate Expence, or a Penalty, to be paid.

In every Obligation there are two Parties, one is called the *Creditor*, the other the *Debitor*; and by divers other more special Names, according to the divers and sundry Forms of Obligations and Contracts.

The



The Creditor is he to whom any Thing is due by Obligation.

The Debtor is he who is bound.

Bonds are divided into many Kinds: And this Variety in the Stile and Form (for nothing beside that is here to be treated of) proceeds from the Quality of the Debtor, or of the Creditor, or of the Thing which enters into the Obligation, or of the Security proposed.

With respect to the Debtor, Bonds are granted by single Persons, or by Societies and Incorporations.

When granted by single Persons, there is one Principal, or many Principals; or, one or many Principals, with Cautioners one or many.

These single Persons grant the Bond for themselves, or for, or with Consent of another; as are, Bonds given by a Tutor for his Pupil; by a Minor, with Consent of his Tutors; by one interdicted, with Consent of the Person to whom he is interdicted; by a Wife, with Consent of her Husband, in order to affect her heritage; by a factor for his Constituent.

The Form of Bonds is various with respect to the Creditor, who is either a single Person, and takes the Bond to himself, and for his own Behoof; and these terminate in the Creditor's own Person, or are extended to his Heirs or Assignies, with or without Li-

mitation; and these Heirs are nominated or substituted one after another, or not: Or, the same Creditor acts in the Name, and for the Behoof of another; such as, Bonds granted to Tutors or Curators, in Name of the Pupil and Minor; to a Factor in Name of his Constituent; to a Magistrate or Treasurer of a Burgh, in Name of the Community; to an Administrator, or Box-Master of an Incorporation, in Name of the Incorporation; to a Parent, for himself, and in Name and Behalf of a Child; to a Husband and Wife, in conjunct Fee and Liferent.

The Stile of the Bond varies through the Nature of the Thing which enters into the Obligation, or of the Cause of granting the Bond, and which are so many as cannot well be enumerated. Now Bonds, with respect to their Cause, are either for Payment of Money, or for Performance of a Deed stipulated to be done. Again, Bonds for Payment of Money, are either gratuitous, as Donations or Provisions to Children, or they are onerous, as for borrowed Money, for Price of Goods, and Things moveable or immoveable, or annual Pensions.

The Nature of the Security proposed by the Debtor occasions great Variety in the Stile of Bonds, which is either simple or compound; all simple Bonds are only personal, but compound Obligations are either real, or personal only, or with and under certian

certain Conditions and Provisions, or without them. The real Bonds contain Security, either in Immoveables, as Lands, Tenements, &c. and are better known by the Name of Heritable Bonds; or they give Security in moveable Goods, and they contain both real and personal Security; for, regularly, there are none which are simply real, seeing all Bonds whatever are in some Part personal, binding the Person of the Granter to perform one Thing or other.

By simple Bonds is meant, such as contain only the essential and ordinary Clauses of a Bond, as will appear in the Stile of a Bond for borrowed Money. And by compound Bonds is signified, these that, besides the ordinary Clauses, comprehend divers others, as Provisions and Conditions, other Obligations, or Assignations for farther Security, and the like.

Personal Bonds are these, wherein the Creditor satisfies himself with the Person and Promise, or Obligation of the Debtor, and follows his Faith, looking on him as a Man of Honesty and Ability, *i. e.* that he is willing and able truly to perform what he is bound to. On the other Hand, Bonds real are these, wherein the Creditor, for his farther Security and more sure Payment of the Debt, is put in the right of the Debtor's Goods and Estate, either moveable or immoveable; which Goods are impignorated to

the Creditor, whose Right therein endures till the Debt be paid.

All those Sorts of Bonds are either full and substantial, which have the ordinary Clauses wholly expressed, and are either in a Paper by themselves subsisting in their own Form, and in that respect may be called simple Bonds, because not joined with other Writs: Or otherways, though they be in their full Stile, and at Length expressed, yet they are in the Bosom of another Writ, which is the principal one, and gives Denomination to the Writing: Or, Bonds are abridged and shortened, to the end that the Conveyance to which they are adjected may be shorter; for, regularly, the Stile of abridged Bonds is never used, except in compound Writs, as in Dispositions, Contracts, &c.

The essential and peculiar Parts of an Obligation are, the Debitor, the Creditor, the Cause of granting the Obligation, the Subject-Matter, the Time and Manner of Performance. For no Bond can be without these.

We shall begin with Bonds for Payment of Money, which are for Causes either onerous or gratuitous; of the first Sort the chief are, Bonds for borrowed Money.

The Form of a Bond for borrowed Money, by one who is Principal, without a Cautioner, to another for his own Behoof, of the most simple Kind, is this.

' I *A*, by these Presents, grant me to have
 ' instantly borrowed and received from *B*.
 ' the Sum of One thousand Pounds *Scots* Mo-
 ' ney, wherewith I hold me well contented
 ' and satisfied, and exoner and discharge him
 ' and his Successors of the same, renouncing
 ' all Exceptions that can be proponed or al-
 ' ledged in the contrary for ever. Which
 ' Sum, with the ordinary Annualrents there-
 ' of, from the Date of these Presents, to the
 ' Term of Payment underwritten, I bind and
 ' oblige me, my Heirs and Successors whatso-
 ' ever, thankfully to content, repay, and again
 ' deliver to the said *B*. his Heirs, Executors or
 ' Assignies, betwixt the Date hereof and the
 ' Feast and Term of *Whitsunday* next to come,
 ' in the Year 1752, with One hundred Pounds
 ' Money foresaid of liquidate Expence, in case
 ' of Failzie; together also with the due and
 ' ordinary Annualrent of the said principal
 ' Sum, (*a*) conform to the Acts of Parlia-
 ' ment and Custom of this Kingdom, yearly,
 ' termly, monthly, and proportionally, so long
 ' as the same shall happen to remain unpaid
 ' after the Term of Payment aforesaid. And
 ' (*b*) that these Presents may be registred in
 ' the

(a) These Words, *conform to the Acts of Parliament
 and Customs of this Kingdom*, are now generally omitted.

(b) Or thus, I consent (or consenting) to the Regi-
 stration hereof in the Books of Council and Sessi-
 on, or any others competent, to have the Strength of
 a Decreet interponed thereto, &c.

' the Books of Council and Session, or in the
 ' Books of any Judicatory competent within
 ' *Scotland*, to have the Strength of a Decreet
 ' of any of the Judges thereof, interponed
 ' thereto; that Letters of Horning on six
 ' Days, and other Execution in Form as ef-
 ' feirs, may pass hereupon. I constitute-----
 ' my Procurators, &c. In Witness whereof,
 ' I have signed these Presents (written on
 ' stamped Paper by C.) at *Edinburgh* the 7th
 ' Day of *January* 1752 Years, before these
 ' Witnesses D. and E.

Signed A.

Signed D. Witnesses.

E. Witnesses.

The Bond may be divided into four Parts.
 I. The Receipt of the Money, which is sub-
 divided into three Sections. II. The Oblige-
 ment to repay it, which is under-divided in-
 to eight Parts. III. The Clause of Registra-
 tion. And, IV. The Subscription, which men-
 tions the Name and Designation of the Writer,
 the Date, and the Name and Designation of
 the Witnesses, according whereunto the Bond
 is signed.

But because this Form may be thought to
 contain Clauses unnecessary and superfluous,
 tho'

tho' in daily Practice, I give a Bond in a more compendious Stile.

I *A.* oblige me and my Successors, to pay at *Whitsunday* next, to *B.* his Heirs or Assignies, the Sum of 1000 Pounds Scots of borrowed Money, under the Penalty of 100 Pounds, with the ordinary Annualrent of the said principal Sum from the Date hereof during the Not-Payment.' Follows the Clause of Registration and of Subscription, as before.

The Stile of Bonds granted by many Principals does not much differ from that granted by one; for, where the Name of one Principal was expressed, the Names of two are set down, which is in the Beginning of the Bond; and in the following Parts of it, in Place of the Singular *I*, *me*, and *mine*, the Plural *we*, *us*, and *our*, are used; only in the obligatory Part, the Words *conjunctly* and *severally* are adjoined thus; 'Which Sum we the said *A.* and *B.* bind and oblige us, conjunctly and severally, our Heirs and Successors whatsoever, &c.' If these Words, *conjunctly* and *severally*, were not added, each Principal, by the Laws of Scotland, is only liable *pro rata portione* of the Principal Sum, i. e. for his equal Share. It is otherways by the Roman Civil Law.

The

The Stile of Bonds granted by a Principal and a Cautioner does not much differ from the Form above set down, except that the Cautioner's Name is only expressed in the obligatory Part of the Bond, and in that he differs from the Principal, who gives the Receipt of the Money applied to his own Use, whereas a Cautioner has no Benefit, and is only a Surety to the Creditor. Cautioners may be in Bonds granted by one or many Principals, and in the first Part of the Bond, *i. e.* the Receipt, the Stile does not differ. When you come to the obligatory Part, the Stile is thus; 'Which Sum, 'I as Principal, and B. as Cautioner, Soveryt 'and full Debitor for and with me, bind and 'oblige us, conjunctly and severally, &c.' And so proceeds as if they were both Principals; only, before the Clause of Registration, some use to insert an Obligement of Relief by the Principal to the Cautioner, whereof the Stile shall be given when we come to speak of Bonds of Relief.

The Difference betwixt Bonds granted by many Principals, and these granted by a Principal and a Cautioner, is, the Cautioner is always looked on favourably, seeing no Part of the Money was applied to his Use, which is otherways presumed in the Case of many Principals. 2. If he be charged, he has this Reason of Suspension, which is always presumed, that if the Debt be any Time due, he may alledge, that either the principal Sum, in Whole or in Part, at least that the bygone

An-

Annualrents are paid by the Debitor, and will be allowed Letters of Diligence for recovering the Discharges. 3. If the Words *conjunctly and severally* be not in the obligatory Part of the Bond, the Cautioner cannot be charged till the Principal be discussed, *that is*, till the Principal be denounced and registered to the Horn, and his Land-Estate adjudged.

If the Bond be granted by one having Right to Lands tailzied to him and others, under Provisions irritant, as, That he shall not have Liberty and Power to contract Debts, whereby the Lands and Estate might be adjudged, a Clause is adjected, declaring ' it is not permitted and allowed to the Creditor to apprise or adjudge the Estate tailzied belonging to the Debitor, for Payment of the Money contained in the said Bond.' And I have seen another Declaration, ' That it should not be leifom to the Creditor to use any real Execution upon the Bond, against any other Estate belonging to the Debitor, but allenarly against some Lands that were particularly therein named, with their Per- tinents.'

Bonds granted for another, and which oblige not the Signer, but a third Party, to whose Behoof the Money is borrowed, are rare and very unsure, and almost never occur, yet, for Institution's Sake, take the following Examples.

A

A Bond of borrowed money, by a Tutor in Name of his Pupil, might be thus: ‘ I A. Tutor Testamentary to B. nominated and appointed by the deceast B. his Father, conform to his Testament of the Date----- by these Presents, grant me to have borrowed, and in Name and for the Use and Behoof of the said B. my Pupil, to have received from C. the Sum of 1000 Pounds Scots Money, wherewith I hold me well contented and satisfied: And in Name of my said Pupil, discharge, &c. renouncing, &c. Which Sum of 1000 Pounds, I, as Tutor foresaid, bind and oblige the said B. his Heirs and Successors, thankfully to content, &c. in common Form. In witness whereof, &c. I have, for and in Name of my said Pupil, signed these Presents at-----

Bonds by Factors, in Name of their Constituent, and Obligations by Overseers, or *prepositi negotiis*, &c. binding the Preponents, shall be narrated in that Title which treats of compound Bonds, because the Stile of these Writs contains Narration of others, and have a special Narrative as their Introduction.

If the Creditor would have the Tutor or Factor bound as Cautioners for the Pupil or Constituent, the Stile may be this: ‘ I, as Tutor or Factor foresaid, bind and oblige the said B. my Pupil or Constituent, as Principal, and myself as Cautioner, &c. conjunctly and severally, and our Heirs, &c.’

Bonds

Bonds which require the consent of others, are such as are granted by minors, with consent of their curators; by persons interdicted, with consent of those to whom they are interdicted; by a wife, with consent of her husband, in order to affect her heritage. These granted by persons interdicted, with consent, &c. shall be treated in the title of compound bonds, because they have a narrative. A bond by a minor, with consent of his curators, may be in this form.

‘ I *A.* with advice and consent of *B, C,* and *D.* my curators, grant me to have borrowed, &c. wherewith I hold me well content, &c. and with advice and consent foresaid, discharge, &c. renouncing, &c. Which sum I, with consent of my curators above named, bind and oblige me, &c. *in common form.*’

These sort of bonds, as also those granted by a tutor for his pupil, or by a factor for his constituent, should have an obligation to move and cause the pupil or minor, at majority, and the constituent, at his returning to the kingdom, to ratify and renew the bond.

In relation to bonds granted by tutors, or minors with consent of their curators, or by persons interdicted, with consent, &c. the creditor should know how many of these consenters make a *quorum*, if any be *sine quo non*, and if he be signing; wherefore it is most fit that the nomination be considered by the writer, who, if he will act surely, must not

rely on report of parties, but look unto, and consider the nominations: And it were not amiss that the bond expressed how many are a *quorum*.

There is very little security in bonds of borrowed money granted by pupils, minors, or factors, &c. whereby another than the signer is intended to be bound; but because of necessity sometimes such bonds are granted. It is fit to take notice, that no bond of borrowed money bindeth minors, except the money be profitably employed by them, or by their tutors or curators to their behoof, which the law calls *in rem versam*: If otherwise, the bonds are revocable and reducible *ex capite minoritatis et laesionis*: Which danger makes this kind of bonds to be out of practice; and here they are only set down for institution's sake.

Bonds personal, for payment of money by married women *stante matrimonio*, are null; for, during marriage, no wife can validly bind her person, even with her husband's consent, although the bond was judicially ratified; albeit, with her husband's consent, she may dispose of her estate, moveable or immoveable. Hence it is, that if an heiress wife should dispoise lands, or other things, give obligation of absolute warrandice, with consent of her husband, though the disposition be valid, yet the obligation of warrandice would be null: For the case of an obligation

ligement and a disposition is not alike, because a woman is more easily induced to oblige herself, than to alienate or dispoſe: And when ſhe gives and diſpoſes, it is no more than ſhe hath, but ſhe may bind for more than ſhe hath, *in infinitum*. Nevertheless a wife, *matrimonio ſtante*, may oblige herſelf to infeſt her husband's creditors in annual-rents out of her own property, and for that effect may grant obligements to infeſt, and procuratories of reſignation, which will be ſo far valid and ſufficient againſt her, that lucrative deeds done by her, to the prejudice of ſuch creditors, are reducible *ex capite doli*, and by the act of parliament 1621. The bonds then, which are validly granted by a wife, with her husband's conſent, being real, *i. e.* having reſpect to her eſtate moveable or immoveable, the ſtile of them ſhall be given when we ſpeak of ſuch bonds.

Of bonds granted by ſocieties and incorporations, the chief fort are theſe granted by magiſtrates of a burgh binding the community; the ſtile is in this form: ' We *A.* provost
' of the burgh of *Edinburgh*, *B.*, *C.*, *D.*, and
' *E.* baillies, *F.* dean of guild, *G.* treaſurer of
' the ſaid burgh, with the remanent council,
' deacons of crafts, ordinary and extraordinary,
' for ourſelves, as representing the whole
' body and community of the ſaid burgh, grant
' us to have borrowed, for the uſe, and in
' name and behalf of the ſaid burgh and com-

‘ munity thereof, from *H*, the sum of, &c. in
 ‘ *communi forma*. Which sum of-----we,
 ‘ the said *A*, &c. as representing, &c. bind
 ‘ and oblige us, and our successors in of-
 ‘ fice, thankfully to content, &c. in *communi*
 ‘ *forma*. In witness whereof, we have sub-
 ‘ scribed these presents at, &c.’

Bonds by an incorporation of a trade are made by the present deacon and box-master, by the whole old deacons and old box-masters, and by the masters of the trade; the names of all which persons are mentioned in the bond, that must be signed necessarily by the present deacon and box-master, and by as many of the other persons mentioned as he can get; the stile whereof is thus.

‘ **B**E it known to all men, by these present
 ‘ letters, us *A*. deacon, and *B*. boxma-
 ‘ ster of the fleshers of the *Canongate*, *C*, *D*,
 ‘ *E*, and *F*, masters of the said craft, for our-
 ‘ selves, and in name and behalf of, and as
 ‘ representing the whole members and bre-
 ‘ thren of the same: Forasmuch as *G*. has, at
 ‘ our earnest desire and request, advanced,
 ‘ paid, and delivered to us (towards the fur-
 ‘ nishing and completing of our new market-
 ‘ place in the *Canongate*, in timber and in
 ‘ slate, visibly tending to our perpetual being,
 ‘ and subsistence of our calling) all and whole
 ‘ the sum of 2000 merks *Scots* money, where-
 ‘ with we, for ourselves and our successors in
 the

‘ the said craft, hold us well contented, renouncing, &c. Therefore wit ye us to be bound and obliged, likeas we, by these presents, bind and oblige us, and our successors in place and office, and the said craft and whole members and brethren thereof, thankfully to content, pay, and again deliver to the said G. his heirs, executors or assignies, the foresaid sum, &c.’

Creditors in bonds, for the most part, are single persons, acting for themselves and their own behoofs: The stile of bonds granted to such, may be gathered from what is said before; but if the bonds be for the behoof, and in name of another, as to a tutor in name of his pupil, it is thus: ‘ Grant me to have received from A. tutor to C. for himself, and in name and behalf of his said pupil, the sum of, &c. Which sum I bind me, &c. to pay to the said C.’ (the pupil) without taking notice of the tutor in the obligatory part. The same is to be observed in the case of a curator: But when the money is lent by a factor, for the behoof of his constituent, the bond bears the receipt of the money from the factor, in name and behalf of his constituent, and the obligatory part makes the money payable to the constituent, his heirs or assignies; and sometimes is adjected, ‘ Or to the said B. his factor, or to any other he the said C. (constituent) shall appoint.’

Bonds of borrowed money granted to burghs, or incorporations, or societies, bear the receipt of the money from the treasurer of the burgh, or society, or from the box-master of the incorporation, in name and behalf of the community, &c. and the money is made payable to the present treasurer, box-master, or to his successor in office, for the use and behoof of the community. When there is an act of the town-council, or of the incorporation, &c. warranting the treasurer, or box-master, to lend the money to that debtor, it is sometimes narrated in the bond.

If the parent lay out money for the use of the child, the clause of receipt in the bond is, from *A.* ‘ for himself, and in name and behalf of *C.* his son,’ and the obligatory part is ‘ to the said *A.* he being on life, and, failing of him by decease, to the said *C.* his heirs or assignies.’

In like manner, when the money is destined to the behoof of a wife, the receipt is from the husband, ‘ for himself, and in name and behalf of *B.* his spouse,’ and the payment is, ‘ to the said *A.* and *B.* in conjunct fee and liferent, and, after their decease, to *C.* their son, his heirs,’ &c. Or it is ‘ to the said *A.* his heirs or assignies whatsoever.’

In these bonds for money lent by a father, for the use of his children, or to the behoof of a wife, this provision is ordinarily
adjected,

adjected, and is placed before the clause of
 registration; ' It is always hereby provided
 ' and declared, that it shall be lawful to the
 ' said *A.* during his lifetime, without con-
 ' sent of the said *C.* his son, to uplift, dis-
 ' charge, assign, or otherways dispose upon the
 ' sum above mentioned, or any part thereof,
 ' any manner of way he shall think fit, and
 ' to grant all writs and rights necessary re-
 ' lating thereto, as he shall think expedient,
 ' and as freely, in all respects, as if the said *C.*
 ' his son were not provided thereto. And
 ' farther, it is hereby provided and declared,
 ' That such annualrents of the said principal
 ' sum, as shall be resting the time of the
 ' decease of the said *A.* shall pertain and be-
 ' long to the said *C.* his son, and noways to
 ' the said *A.* his executors: And of which
 ' annualrents, that shall be so resting, I bind
 ' and oblige me, and my forebears, to make
 ' payment to the said *C.* and his above speci-
 ' fied, at the payment of, and together with
 ' the said principal sum, in case the same be
 ' not assigned, or otherways disposed upon by
 ' the said *A.* in his own time.'

The clauses of simple bonds of borrowed
 money, in which the stile varies, are the
 clause of receipt of the money, which is ei-
 ther instantly received, or at a term or time
 before the date, and is thus expressed; ' Grant
 ' me to have borrowed and received at *Mar-*
 ' *tinmas* last bypast, notwithstanding of the
 ' date

' date hereof, the sum of 1000 pounds, &c.
 When the money is made to bear annualrent
 from a term or time long before the date
 of the bond, this clause is fit to be expressed,
 ' For avoiding the hazard of usury,' which is
 taking more annualrent, either in quantity,
 or with respect to time, than is really and
 truly due. In the obligatory clause, the heirs
 and successors of the debtor are sometimes
 more fully expressed than is done in the bond
 above set down, as thus; ' I bind and oblige
 ' me and my heirs, as well male as of line,
 ' tailzie, conquest, provision, and all others
 ' my successors, executors and intromitters
 ' with my goods and gear whatsoever, con-
 ' jointly and severally, renouncing the bene-
 ' fit of the order of discussing them.' This
 is to be noticed, when bonds are granted by
 persons whose fortunes are tailzied, and is ne-
 cessary to prevent the exception of discussing,
 competent in law to heirs of the second or-
 der. The heirs and successors of the credi-
 tor are directly expressed, sometimes the ex-
 ecutors are secluded; and I have seen a bond
 of borrowed money granted to one and his
 executors, secluding his heirs; and sometimes
 the bond contains a tailzie and substitution of
 persons, as to a ' man and his son A. and the
 ' heirs lawfully to be procreated of his body,
 ' which failing, to B. and the heirs lawfully
 ' to be procreated of his body,' and so forth,
 to as many as the lender pleases; ' which
 ' all

' all failing, to J. his heirs or assignies what-
 ' soever, secluding his executors: ' And be-
 cause, by law, those who are first in the in-
 stitution or substitution may uplift and dis-
 pose upon the money, without consent of
 those who are appointed to succeed after
 them, for preventing which I have seen this
 clause added, ' That it should not be lawful,
 nor in the power of the debtor, to pay the
 ' money to the institute, except upon getting
 ' a discharge signed by the substitute also, in
 ' token of his consent; ' which clause hath
 had its designed effect. The terms of pay-
 ment are various, for either the money is
 payable at one term, and then it is expressed,
 as in the example above mentioned; or it is
 payable at many terms, thus, ' And that be-
 ' twixt the date hereof, and the respective
 ' terms of payment, in the special proportions
 ' and moieties underwritten, viz.-----
 Or thus, ' With the due and ordinary annual-
 ' rent thereof, from the term of *Whitsunday*
 ' 1752, to the terms of payment *respective*
 ' underwritten, and that in manner and at the
 ' terms following, *to wit*, 500 merks there-
 ' of at *Martinmas* next to come, and other
 ' 500 merks at *Whitsunday* thereafter, and the
 ' sum of 500 merks, in full and complete
 ' payment of the whole above written prin-
 ' cipal sum, at *Martinmas* 1752, with the
 ' sum of 60 pounds money foresaid of liqui-
 ' date expences for each term's failure.' It
 is

is to be observed, That when the principal sum is thus divided, and to be paid at many several terms, the penalty must not be a whole sum for the principal, but so much for each moiety, and for each term's failure, as in the example above written.

Every obligation is imperfect if a penalty be not liquidate, and the penalty is still proportioned to the principal sum. The rule which writers observe most frequently, is 100 pounds for each 1000 merks principal; others guide themselves by the act of parliament concerning adjudications, in allowing the fifth part of the principal: But in this there is no certain rule; for in greater sums the penalty is less than 100 pounds to 1000 merks; and in petty sums the penalty is made greater than the fifth part of the principal; and generally respect is had to the expences of diligence, which necessarily must be used for getting payment if the debtor fail, for sometimes the necessary expence will exceed the principal, when small.

If the debtor be owing other sums besides these in the bond, it is convenient to adject this clause, ' And it is hereby declared, ' that the sums contained in this present bond, ' are over, above and besides any other sum ' due by me to the said A. or for which I ' stand bound to him: ' Or thus; ' That the ' sums contained in this bond, are besides the ' sums

‘ fums contained in a bond of the date, &c.
 ‘ and in another of the date,’ &c.

Bonds are granted for the price of goods, or merchant-ware, and the bond exprefly bears it thus ; ‘ Grant me to be juftly refting and
 ‘ owing to *B.* the fum of 500 pounds *Scots*
 ‘ money, as the price of goods and merchant-
 ‘ ware, bought from, and delivered to him
 ‘ by me, wherewith I hold myfelf well con-
 ‘ tented and fatisfied, &c. which fum I bind
 ‘ and oblige me to pay :’ Or thus, more ge-
 ‘ neraly, ‘ Grant me to be juftly addebted,
 ‘ refting or owing to *B.* the fum of 500
 ‘ merks, which I bind me to pay ;’ and the
 reft of the claufes of the bond are fet down
in communi forma. Thus any cafe that may
 occur is expreffed, except when it requires a
 narration of circumftances and caufes, and then
 the bond is compound, and a narrative muft be
 formed, as fhall be fhewn hereafter. ,

There are bonds for penfions, and yearly
 payment of a certain fum to continue during
 pleafure, or otherways, as is agreed, which
 bonds are not gratuitous, feeing they are gi-
 ven for fervices done, and to be done. The
 Stile whereof is of this or the like form.

‘ **I** *A.* confidering that I have named *B.* to
 ‘ be my advocate in ordinary, and that
 ‘ he will be at confiderable pains and trouble
 ‘ in difcharging that trust, I am refolved to
 ‘ fettle on him the yearly falary underwrit-
 ‘ ten :

‘ ten: Therefore, I bind and oblige me, my
 ‘ heirs and successors, to content, satisfy and
 ‘ pay to him, his heirs or assignies, the sum
 ‘ of-----*Scots* money yearly, and each year
 ‘ during his lifetime, and serving me as or-
 ‘ dinary advocate, at least, ay and while these
 ‘ presents be discharged by me in writing, be-
 ‘ ginning the first year’s payment thereof at
 ‘ *Whitsunday* next to come, 1752, for the
 ‘ year preceeding, and so forth yearly there-
 ‘ after during the said space. Registration,
 &c.

Bonds for payment of money may have ma-
 ny other onerous causes besides these above
 set down, but the manner of expressing the
 same, and of forming a bond thereupon, may
 be sufficiently known from these few examples
 given.

Bonds for payment of money proceeding
 upon a gratuitous cause, are free gifts and do-
 nations, or provisions of children; donations
 in an obligatory form bear to be granted ‘ for
 ‘ love and favour, and out of kindness, good-
 ‘ will, or certain respect, which the granter
 ‘ has to the other party,’ and do not much
 differ from the stile of bonds of provision. It
 is to be observed, that because such deeds of
 favour are not usually, at signing, delivered
 to the party, it is fit there be a clause dispen-
 sing with not delivery.

Bonds

Bonds of provision are granted by a father to his children, or by an husband to his wife, who is not otherways provided through want of a contract of marriage, or by an elder brother to younger brethren or sisters not provided by the father. Bonds of provision by a father to a child, may be considered as in some part gratuitous, in some part not; for if the father was not, by contract of marriage, bound to provide his children in a certain sum, then the bond of provision, having no other cause than paternal duty, proceeds on mere fatherly care and natural affection, and is so expressed: But if he was bound, then that clause in the contract of marriage is previously narrated, and an induction or subsumption is made thereupon, as will appear from the examples which shall be given when we treat of compound bonds.

The stile of a simple bond of provision is thus: ‘ I *A.* for the paternal love and fatherly affection I bear to *B.* my lawful son, and
 ‘ for his portion, bind and oblige me, and
 ‘ my heirs, as well male, &c. to make due
 ‘ and thankful payment to the said *B.* and to
 ‘ the heirs lawfully to be begotten of his body, or to his assignies; which failing, to return to me and my heirs whatsoever, of the
 ‘ sum of six thousand merks *Scots* money, and
 ‘ that at the first *Whitsunday* or *Martinmas*
 ‘ next, or immediately following my decease,

C

when

‘ when the same shall happen at the pleasure
 ‘ of GOD, with the sum of six hundred
 ‘ pounds money foresaid of liquidate expen-
 ‘ ces in case of failzie, and with the ordinary
 ‘ annualrent of the said principal sum, con-
 ‘ form to the acts of parliament, yearly, term-
 ‘ ly, monthly, and proportionally, so long as
 ‘ the same shall happen to remain unpaid, af-
 ‘ ter the term of payment foresaid.’

In bonds of provision the following oblige-
 ment is frequently insert: ‘ And farther, I
 ‘ bind and oblige me and my foresaids, upon
 ‘ my own expence, to entertain, educate, ali-
 ‘ ment and furnish the said *B.* with all things
 ‘ necessary, until the term above mentioned,
 ‘ appointed for payment of his portion, and
 ‘ for the space of six months thereafter.’ And
 if the bond be to a child of a nobleman or
 ancient baron, the clause to furnish necessaries
 must have thereto adjected, ‘ According to
 ‘ their birth and quality.’

It is necessary likewise to adject this decla-
 ration, ‘ And it is hereby declared, that this
 ‘ bond of provision is in full contentation and
 ‘ satisfaction to the said *B.* my son, of all
 ‘ bairns part of gear, portion natural, execu-
 ‘ try, legacies, former provisions, or any other
 ‘ thing whatsoever that he can ask, claim or
 ‘ crave by and through my decease, when
 ‘ the same shall happen at the pleasure of
 ‘ GOD.’ And in some cases may be added,
 ‘ Or his mother’s decease, or his mother’s
 ‘ contract

' contract of marriage, or any other manner
 ' of way, except allenary what I shall be
 ' farther pleased to bestow upon, and provide
 ' to him at any time during my life.' And
 likewise this clause is enlarged with this ad-
 dition, ' It is always hereby declared, that in
 ' case I shall assign to the said *B.* any bond or
 ' bonds containing as much of principal sum
 ' as in this bond of provision, then, and in
 ' that case, the said *B.* shall be obliged to ac-
 ' cept the same, and this bond of provision
 ' shall become void and null from thenceforth,
 ' and for ever. Upon which express provisi-
 ' on this bond is granted and accepted, and no
 ' otherways.'

Sometimes it is necessary to adject the fol-
 lowing reservation and declaration, ' Reser-
 ' ving, nevertheless, full power to me at any
 ' time of my life, *vel in ipso articulo mortis*,
 ' to revoke, alter, or innovate this bond, and
 ' to declare the same null, and to augment or
 ' diminish this portion, if I shall think fit, and
 ' that by a declaration to be subscribed with
 ' my hand, which shall be sufficient for that
 ' effect; but, in case I shall not alter the same,
 ' then I declare this to be a valid evident in
 ' favour of him and his foresaids, albeit it be
 ' lying in my own custody, or in the keep-
 ' ing of any person, undelivered to him the
 ' time of my decease, notwithstanding of
 ' whatsoever act, law, or practice made, or
 ' to be made in the contrary, wherewith I, for
 C 2 ' me

‘ me and my heirs, by these presents dis-
 ‘ pense.’

When the bond of provision is made by a father, in favours of his whole children, the stile is thus : ‘ I *A.* for the paternal love and
 ‘ fatherly affection that I have and bear to *B.*
 ‘ *C.* &c. my lawful children, by these pre-
 ‘ sents, under the provisions and conditions af-
 ‘ ter specified, bind and oblige me, my heirs,
 ‘ successors, and executors whatsoever, to
 ‘ make good and thankful payment to my said
 ‘ children of the several provisions underwrit-
 ‘ ten, viz. to the said *B.* the sum of-----
 ‘ Scots money, to the said *C.* the sum of-----
 ‘ money foresaid, and that immediately after
 ‘ they shall attain to the respective ages of
 ‘ fourteen years complete, together with ten
 ‘ merks for each hundred merks of their prin-
 ‘ cipal sums of liquidate expences, in case of
 ‘ failzie, by and attour their respective provi-
 ‘ sions, together also with the ordinary annu-
 ‘ alrent of their said portion, from the first
 ‘ term of *Martinmas* or *Candlemas*, *Whit-*
 ‘ *sunday* or *Lammas*, immediately after my
 ‘ decease, whether the same happen after or
 ‘ before their attaining to their said respective
 ‘ ages of fourteen years complete. Provi-
 ‘ ding always, likeas it is hereby expressly pro-
 ‘ vided and declared, That, if any of my said
 ‘ children shall depart this life before their
 ‘ marriage, and also before their majority, in
 ‘ that case the portion of the child so deceas-
 ing,

' fmg, fhall fall, accrefce, and belong to the
 ' two furviving children equally betwixt them;
 ' and, if either of the two furvivors deceafe
 ' before their marriage or majority, in that
 ' cafe the provision of the child who deceafes,
 ' with the addition of what fell by the de-
 ' ceafing of the other, fhall fall, accrefce, and
 ' belong to the heir, and laft furviving child
 ' equally betwixt them. And it is farther
 ' provided and declared, That it fhall not be
 ' leifom to my faid children, to frustrate the
 ' forefaid condition and deftination, by difpo-
 ' ning or affigning their faid refpective portion
 ' to any perfon before their marriage, and du-
 ' ring their minority, without prejudice to
 ' them, after their refpective marriages, or af-
 ' ter the elapfing of their minority, to affign
 ' and difpofe upon their portions as they fhall
 ' think fit.' And if the granter be a noble-
 ' man or gentleman of an opulent fortune, or
 ' if his eftate be tailzied, the bond of provision
 ' may bear, ' That the portion fhould, in the
 ' laft place, return to himfelf and his heirs
 ' male and of tailzie fucceeding to him in his
 ' dignity and eftate.'

When a bond contains the portions and pro-
 vifions of many children, with fuch conditions
 and deftinations as thefe above mentioned, the
 father is in ufe to fign feveral copies of that
 bond, in which this claufe may be infert:
 ' And to the effect every one of my faid chil-
 ' dren

‘ dren may have an authentic double of this
 ‘ present bond of provision, I have likewise
 ‘ subscribed two other doubles of these pre-
 ‘ sents, of the same date, tenor and contents,
 ‘ any one of which three bonds being fulfil-
 ‘ led, the other two are to be void, as being
 ‘ for the said cause and sums.’

The terms of payment of provisions to
 children, are either at any year within their
 majority, as 12, 14, 16, 18, 20, or 21. or at
 the first *Whitsunday* or *Martinmas* after the
 father’s decease, as the party shall conde-
 scend.

The manner of dividing the sums provided
 among many children is as arbitrary ; for ei-
 ther every child is provided to a certain sum,
 and then there is no necessity of a clause of
 division, or else the father provides a large
 sum in general to all his children named in
 the bond ; or sometimes he makes provision
 for the children to be procreated, as well as
 the children already procreated, and named in
 both. In which cases, the following clause of
 division may serve, with a small alteration, and
 may be thus expressed : ‘ If there be two,
 ‘ three, or many sons and daughters procre-
 ‘ ated, or to be procreated betwixt the father
 ‘ and the mother,’ in that case the father de-
 clares, ‘ That the said sum of ----- is to be
 ‘ divided amongst them as he shall think fit,
 ‘ and shall order in his own time, and to be
 ‘ paid at such terms as he shall be pleased to
 ‘ appoint ;

'appoint; and failing of any such division, in
 'that case the sum is to be divided by two of
 'the nearest of kin on the father's side, and
 'two of the nearest in kin on the mother's
 'side. And if there be no such division, in
 'that case the sum of-----thereof is to
 'belong to the eldest, and the remainder to
 'be equally divided amongst the other chil-
 'dren, and to be payable (if he shall appoint
 'no term in his own lifetime) at the *Whit-*
 '*sunday* or *Martinmas* next, and immediately
 'following his decease, when the same shall
 'happen at the pleasure of GOD.'

The sums in bonds of provision seldom
 bear annualrent, till after the term of pay-
 ment.

In bonds of provision the penalty is not al-
 ways specified, as in common bonds; for when
 the sum is blank, as it sometimes happens to
 be, that the father at any time he pleases
 may fill it up, it is not usual to leave a blank
 for the penalty too, but the penalty in these
 cases, being for the most part ten for each
 hundred, writers use this general clause, 'With
 'one hundred for each thousand merks of
 'the said principal sum of liquidate expences
 'in case of failzie.'

Provisions to wives, not otherways provi-
 ded by an ordinary contract signed before
 solemnization of the marriage, are made by
 granting writs in form of a contract between
 man

man and wife, as shall be treated in the stile of contracts.

Bonds of provision, by a brother to a sister, have, for their clause, ' The love and favour ' the granter bears to his brother or sister, ' and for his or her better provision, binds ' and obliges himself to pay-----' in the same way as if it were granted by the father.

OF BILLS OF EXCHANGE.

MONEY is also got and gifted by legacy and in testament, which is an original constitution of a debt, and by which the executor becomes bound to the legators for payment of what is bequeathed, and so in this place one might expect to find something concerning testaments; but, because they are not formal obligations, and may be considered as conveyances and deeds of alienations, it is thought fit to refer the giving the stile of testaments till we treat of conveyances.

Money is due, and a debt may be constituted by bills of exchange as well as by bonds; and of late the use of such bills is become frequent; which makes it very convenient to give a short advice concerning bills of exchange, their several forms and manner of
pro-

proceeding (a). And, *first*, Bills are either *Out-land*, and then they are drawn by, or upon per-

(a) Exchange is a contract *bonæ fidei et species mutui*, with this difference, that the last is a contract *stricti juris*; and it may be defined, *The business or trade of money carried on between one place and another by means of bills of exchange, i. e. by giving money in one city, and receiving a bill to entitle the giver to receive the value in another city. Or shortly thus; A contract, whereby one exchanges present money for absent money, or changes his debtor.*

It hath been much debated among lawyers, to what sort of contract it is reducible; some contending it to be a kind of innominate contract, *do ut des*; others will have it *species locationis, conductionis*; and some are positive it is a downright borrowing. Lord Stair in his *Instit. Lib. I. Tit. II. Sect. 7.* calls it the ordinary *mutuum* among merchants.

The price of exchange is regulated according to the course of the place where the bill is drawn, or that of the place where the remittance is to be made; and some pretend, that it is the city of *Lyons* gives the law or rule for the price of exchange to most of the other cities in *Europe*.

The first commerce among mankind was carried on by exchange, people furnishing each other mutually with what things they wanted; but such exchanges were liable to many inconveniencies: To remove the, money was invented for a common medium, and, instead of exchanging, buying and selling was introduced; But the transporting of money from one nation to another being in some places discharged, in others impracticable, and generally prejudicial, by the loss that may be sustained, through the less intrinsic value of the species in the place to which it is transported, or by robberies, or other accidents incident to travellers, bills of exchange were introduced by the law of nations,

persons living in a foreign country, and the money payable *in specie* foreign. Or *Inland*,

nations, confirmed by the constitutions of princes and republicks, and hath every where obtained, as the easiest way to supply the want of money in expediting traffick, and to prevent the exportation of gold and silver, which was unavoidable before this invention; which, as it was at first necessary, was soon found convenient, and so mightily improv'd, that now it is become a very lucrative way of trading in money.

The time when this kind of commerce began is not certain; some learned men derive it from the customs of the *Hebrews*, thus: Upon the first of the month *Adar*, (which is the last month of the *Jewish* ecclesiastick year, answering to our *February*) a proclamation was made throughout all *Israel*, that the people should provide their half shekels, which were yearly paid towards the service of the temple, according to the commandment of God, (*Exod. xxx. 12.*) On the 25th of *Adar* they brought tables into the temple, that is, into the outer court, where the people stood; on these tables lay the lesser coins, which were to furnish those who wanted half shekels for their offerings, or that wanted lesser pieces of money in their payment for oxen, sheep, doves, and the like, which stood there in a readiness, in the same court, to be sold for sacrifices: But this supply, and furnishing the people from those tables, was not without an exchange for other money, or things in the place of money, and that upon an advantage. Hence all those that sat at the tables were called *bankers*, or *masters of the exchange*; and we find them all expelled out of the temple by our Saviour, *Matth. xxi. 12.*

But according to the common opinion, bills of exchange are the invention of the *Jews*, who, being banished *France* for some enormous crimes charged upon them, retired into *Lombardy* about the twelfth century, and

land, when drawn by, or upon persons living within *North-Britain* or *Scotland*, and payable in the current money thereof.

As to the persons employed about bills, four are ordinarily requisite, two at the place where the money is taken up, and two where it is payable. 1. The deliverer or giver of the money. 2. The taker or receiver of the money, and who on that account draws the bill, and is called the drawer. 3. He (who is to repay the money) upon whom the bill is drawn, and to whom it is directed. And, 4. The party to whom the money is payable, and to whom the bill is sent.

But sometimes only three persons are needful, as when the deliverer of the money takes the money payable to himself.

Yea, money may be transacted by exchange between two persons, as when the drawer makes the bill payable to himself, or order,

and found means to withdraw their effects, which they had lodged in the hands of friends, by secret letters, and bills conceived in short precise terms, like the modern bills of exchange.

The faction of the *Gibellins* being expelled *Italy* by the *Guelphs*, retired to *Amsterdam*, and used the same means for the recovery of their effects in *Italy*, as the *Jews* had done. Hence the *Dutch* merchants took the hint of negotiating bills of exchange, and soon spread the practice through all *Europe*. The same *Gibellins* are also said to be the inventors of re-exchange, on account of damages and interest, when bills of exchange are not paid, but returned upon protest.

order, and directs it to the party that owes him money, and is to pay it by exchange; which method is very convenient, for it constitutes the debt, and makes way for speedy diligence.

There are two copies given for the same sum when the bill is out-land, lest one which is sent by the post should miscarry, the other is kept by the deliverer of the money; and bills, especially foreign, are drawn either at usance, at days sight, or at a certain time after date.

By usance, merchants understand the space of a month after the date of the bill, *i. e.* the same day of the next month following in which the bill is dated, as a bill drawn 10th *June*, payable at usance, must be answered on the 10th of *July*. And there is double usance, *i. e.* two months; treble usance, *i. e.* three months, and half usance, *i. e.* 15 days. The trading towns of *Europe* having different usances, some have simple usance, as from *Edinburgh* to *Amsterdam*; others have double usance, as to *Venice*, &c. and this serves to compute the current price of exchange from one place to another, not that bills on these places may not be paid sooner than one, two or three months, for they may be paid at certain days sight, as parties agree.

A bill payable at so many days sight, is to be accounted so many days next after the bill shall

shall be accepted, and not from the date of the bill, nor from the day the same came privately to hand, or was privately exhibited to the party on whom it was drawn, if he did not accept thereof, for the sight must appear in a legal way, *i. e.* by acceptation or protest.

Bills payable at a certain time after their date, are much in affinity with those payable at usance.

The several FORMS of BILLS of EXCHANGE.

100 *l. sterling.*

Edinburgh, June 27. 1752.

' At six days sight pay this my first *per*
' exchange to *A.* or his order, one hundred
' pounds *sterling*, for the value here received
' of *B.* and place it to accompt, as *per* advice
' from

C.

To *D.* merchant
in *London.*

The second bill is the same with the first, with a little alteration and addition.

' At six days sight pay this my second *per*
' exchange (*my first not being paid*) to *A.*
Or thus;

' At six days sight, not having my first, pay
' this my second *per* exchange to-----

D

If

If he who signs the bill is to make himself debtor, he writeth in the bill, ' and put it ' to my accompt.' But if he to whom it is directed is debtor to the drawer, then he writes, ' and put it to your accompt;' or he says, ' Value in your own hands.' Also it is sometimes exprest, ' And put it to the accompt ' of such an one.' But value is, in law, presumed to have been given by the possessor of a bill, though neither the bill itself, nor indorsation thereof, bear value to have been received, unless it be proven, by the writing or oath of the possessor, that value was not given.

If the bill is to be assigned or indorsed to another, the assignment must be writ on the back of the bill thus;

' Pay the contents on the other side to E. ' or order, value of F.' and he signs A.

But if E. do likewise transfer the bill, he writes only thus; ' Pay the contents hereof ' to F.' and he signs E.

Though indorsations may be signed blank for the name of the possessor, yet the *act* 25. *parl.* 1696. discharging writs blank for the receiver's name, is extended to bills of exchange; so that a bill drawn and remaining blank in the name of the person to whom the money is made payable, will be null, though this blank may, *ex post facto*, be filled up in presence of the drawer.

If the bill be transacted among three persons, it bears, ' Pay to A. the sum of ----- ' value of himself received.'

If a bill is to be paid to a trustee, or factor, and payment be made for the behoof of the drawer, it should be thus; ' Pay to *A.* ' for my behoof, the sum of -----

Bills drawn in this form, and accepted, upon non-payment in the due time, must be protested against the acceptor, either personally, or at his dwelling-house, which gives trouble to the haver of the bill to seek out the acceptor, or to go to his dwelling-house with notary and witnesses; to prevent which trouble the bill may be written thus;

' Upon the first of *July*, pay to *A.* or his order, at his dwelling-house in the *Lawn-Market* in *Edinburgh*, the sum of ----- like value you are resting me, with interest after the term of payment. Make thankful payment, and you will oblige your's, &c.' And thus interest and annualrent may be made due by bills of exchange, as well as by bonds: For though the act of parliament in the year 1681. statutes, that sums due by bill shall bear annualrent, in the case of non-acceptance, from the date of the bill, and, in case of non-payment; that annualrent is due from the time the sums fall due; yet that holds only when a bill is duly protested for non-acceptance, or for non-payment.

The form of bills drawn payable to the bank, is thus;

D 2.

Edin-

Edinburgh-----

‘ Sixty days after the date hereof, pay to
‘ ----- or order, at the *Bank-Office*, and in
‘ bank-money, the sum of twenty five pounds
‘ *Sterling*, value received.’

If it be negotiated betwixt two only, then
it is in this form ;

‘ Pay to me, or my order, the sum of-----
‘ due by you to me, or ----- value in your
‘ hands ;’ and the like.

The sum in bills of exchange is twice expressed, once in figures in the top of the bill, or at the side or foot thereof, and in the body in letters ; if these two should disagree, what is fully expressed in letters, and in the body of the bill, is the rule of payment.

No bill, where the name of the person to whom it is payable is mended or interlined, ought to be accepted or regarded.

The direction and acceptance of bills is usually written in the inside of the bill ; the direction is given before, and the acceptance is thus ; ‘ *London, 27th June, 1752. Accepts.*
And then he signs.

Now, the person to whom the bill is paid is ordinarily designed, that it may be known who he is, and also he on whom it is drawn ; but the drawer is not so, for which end, of
late,

late, especially in inland bills, the drawer sub-joins to his subscription, thus; '*A. merchant in Edinburgh*.' Or rather thus; 'Pay to me *A. merchant in Edinburgh*, or my order, &c.'

When the bills are for the use of gentlemen travelling through foreign countries, it is most expedient to have the species of the best and most current money expressed in the bill, which indeed will occasion one and an half, or two and more *per cent.* difference in the exchange. And in foreign parts, especially in *Germany* or *Italy*, where, through the multiplicity of petty sovereignties, their species of money is very different, one sort is more universal than another, and a traveller should have his money payable in such species.

It is most inconvenient to have bills payable to the bearer; for, if such do miscarry, and come to a wrong man's hand, he may receive the money, and he who paid will produce the bill itself for his warrant to pay it to whosoever shall bring it, and thereby the true owner loses his money.

Sometimes, foreign bills carry to be drawn *per advice*; sometimes they bear, *without farther advice*. Which last is more convenient for the haver of the bill; for, in the other case, the party on whom the bill is drawn ought not to accept till the letter of advice

comes to his hand, which may retard the payment, and disappoint the haver of the bill.

Bills of exchange, either inland or outland, are not regulated by the common law, but by the law of merchants, and therefore they need no witnesses to the subscription of the parties; for it supposes that those who deal in exchange are men of honesty and credit, and will truly, and of their own accord, acknowledge their subscription: But, if it should otherwise happen, it might be easily provided against by their letters, in comparing the one with the other, and by the consequences of the draughts and books of accompts, and by divers other circumstances. But this doth seldom occur.

Whenever the bill comes to hand, the same should be presented, and an acceptance demanded, or protest taken for non-acceptance; for no days are by the law allowed to merchants herein to deliberate. However, in discretion, a small time, as 24 hours at most, ought not to be denied, if sought.

If a bill be directed to two or more persons, in this manner, 'To A. and B.' they must both accept; and if any one refuse, the bill must be protested for want of due acceptance. But if it be directed thus, 'To A. or, in his absence, to B. or to A. and B. or to either of them,' the acceptance by any one of them is sufficient, and the bill cannot be protested for want of due acceptance.

Verbal

Verbal acceptance is binding, and probable by witnesses; so that the haver of the bill, upon non-payment, may protest and raise action against the verbal acceptor, which will be effectual.

If the party accept the bill only for part of the money, the haver may take it; but he should, nevertheless, protest for non-acceptance for the whole, and immediately send advice to his friend and correspondent; and at the term of payment, he may receive that part, but should again protest for non-payment of the whole, and give advice accordingly.

Protest for non-payment ought to be made upon the third day after the bill falls due, and advice thereof sent, the first post, to the drawer, or to the correspondent of the haver of the bill; and some use, in certain cases, to protest within two days. The day on which the bill falls due is part of the time limited in the bill, and these days of grace (a)
as

(a) To facilitate the course of commerce by exchange, the dealers that way have generally acquiesced in allowing some little time beyond the precise term of a bill, called, *days of grace*, or *favour*, or *respite-days*; which is congruous to that rule of law, *debitor non debet venire cum sacco paratus*, (L. 105. ff. de Solution.) The number of these accessory respite-days varies according to the respective customs of different places. Here, *London* and *Vienna*, only three days of grace are indulged; four at *Frankfort*, out of the fair-time; *Leipsick*, *Naumburgh*, and *Ausburgh*, five; *Venice*, *Amsterdam*, *Rotterdam*, *Middleburgh*, *Antwerp*, *Cologn*,

as they are called, are counted next after the expiration of that day, and are allowed, as well for him to whom it is payable, to procure payment, as for him, on whom the bill is drawn, to pay it. *Sundays* and *Holidays* are counted in the number.

Though this caution has not been observed, yet it is convenient to make protest for non-payment; even, five, six, or more days, after the time limited in the bill.

If, betwixt acceptance and payment, the acceptor fail in his credit, demand must be made by a notary for better security; and, in default thereof, protest for better security, whereof advice must be sent to the correspondent.

A bill should not be paid before it become due, lest a countermand might be sent by the drawer to the acceptor, who may lose the money, if, before the time in the bill, the drawer send contrary advice, because the money stipulated to be paid for the bill is not delivered to him, or the like.

Of

Cologne, Breslaw, and Nuremberg, six; *Naples*, eight; *Dantzick, Koningsberg, and France*, ten; *Hamburgh and Stockholm*, twelve; in *Spain*, fourteen; at *Rome* fifteen; and at *Genoa* thirty; at *Leghorn, Milan*, and some other places in *Italy*, there is no fixed number of respite-days, the time for protesting, or not protesting, being left to the discretion of the possessor of the bill.

Of BONDS ad facta praeſtanda ſimple.

The ſecond ſort of bonds are theſe granted for performance of certain deeds, which are various, and cannot well be claſſed; nor is there any fixed ſtile uſed, but the ſame are formed according to the paſſion and circumſtance of the parties, or of the deed to be done; however, they may be divided into bonds principal and acceſſory, or bonds of cautionry. I ſhall ſet down the ſtile of ſimple bonds of this kind, which more frequently occur, and may ſerve for a rule and directory in other circumſtances and caſes.

Of bonds principal take the following example. A bond to diſpone lands for a ſum of money inſtanly received, is thus; ‘ I *A.* grant me to have received from *B.* the ſum of 1000 pounds *Scots* money, for which I bind and oblige me, my heirs and ſucceſſors, to diſpone to him, or any perſon he ſhall nominate, the lands and eſtate which belonged to *C.* and which fell in his majeſty’s hands by his forfeiture, and whereunto I have right by a gift granted to me of the date, &c. and to aſſign to the ſaid *B.* the ſame gift, in ſo far as it may be extended to the eſtate, real, or perſonal, which belonged to the ſaid *C.* and to grant all writs that may be needful for denuding me, and eſtabliſhing the

' the right thereof in the person of him, or
 ' any he shall appoint, as said is, with war-
 ' randice from our proper fact and deed al-
 ' lenarly: And, in the mean time, I grant
 ' power to the said *B.* or any he shall think fit
 ' to intrust, to intromit with and uplift the
 ' whole rents, profits and duties of the fore-
 ' said estate, as well bygone resting unpaid, as
 ' in time coming, to be disposed upon by him
 ' at his pleasure, without being countable to
 ' me, or any others, for the same: Providing
 ' always, that the said *B.* upon my granting
 ' the foresaid right to him, be holden and ob-
 ' liged to make payment to me of-----
 ' more, making up in whole, with what I have
 ' now received, the sum of-----*Scots* money,
 ' which I have condescended to accept for the
 ' right of the said forfeiture at his request.
 ' Registration. Horning on six days.

Of BONDS accessory, and of CAUTION-
RY.

The stile of bonds, accessory or cautionary,
 for performance of deeds, may be known
 from the following examples. As, 1. A bond
 of cautionry, in loosing an arrestment, is thus;
 ' I *A.* bind and oblige me, my heirs and ex-
 ' cutors, as cautioners and soverty, acted in
 ' the books of council and session, for *B.* that
 ' his whole goods, gear, corns, cattle, insight-
 ' plenishing, sums of money, debts, horses, nolt,
 ' sheep,

‘ sheep, mails, farms, profits and duties of
 ‘ lands, and others whatsoever pertaining to
 ‘ him, and arrested at the instance of *C.* shall
 ‘ be forthcoming to the said *C.* as law
 ‘ will.’

2. A bond of cautionry in a suspension,
 when for reasons of multiple-poining, is
 thus; ‘ I *A.* by the tenor hereof, bind and
 ‘ oblige me, my heirs, successors, and execu-
 ‘ tors, as cautioner, sovrty, and full debi-
 ‘ tor, acted in the books of council and ses-
 ‘ sion, for *B.* that he shall make payment to
 ‘ *C.* or *D.* or *E.* or *F.* or to any of them who
 ‘ shall be found by the Lords of council and
 ‘ session, to have the best right to the sums
 ‘ underwritten, of the sum of-----*Scots* of
 ‘ principal, with the annualrents thereof, and
 ‘ ----- of liquidate expences, contained in a
 ‘ bond granted by the said *B.* to the deceast *G.*
 ‘ and to which the whole forenamed persons
 ‘ pretend right, in case it should be found by
 ‘ the said Lords, that he ought so to do, after
 ‘ the discussing of the suspension to be raised
 ‘ by him in the said matter.’ When it is in a
 simple suspension, it is in this stile; ‘ That
 ‘ he shall make payment to *C.* of the sum of
 ‘ ----- (as in the charge) contained in a
 ‘ bond alledged, made and granted by the said
 ‘ *B.* as principal, and *D.* as cautioner for him,
 ‘ conjunctly and severally, to *E.* of the date
 ‘ ---- -registrate-----and an assignation made
 ‘ to

‘ to the said C. dated, &c. in case it shall be
‘ found, &c.’

When the suspender is denounced and registered to the horn, and if the letters of suspension contain a warrant for relaxation, the bond of cautionry must have this clause;

And likewise that the said ----- shall
‘ make payment to his Majesty’s treasurer, of
‘ the sum of 10 merks Scots money, in name
‘ of composition, for the escheat of his goods
‘ and moveables, falling in his Majesty’s hands,
‘ through being of the said ----- lawfully
‘ denounced to the horn, and registered for the
‘ causes foresaid.’

‘ When the condition of the cautioner is
doubtful, or unknown to the clerk of the bills,
a person more responsal and unexceptionable
must attest and declare him to be sufficient;
and the clerks are ordained to take from the
attester, as cautioner for the first cautioner,
a bond, that he may be liable *subsidiarie*, as
fully as the first cautioner; the which cautionary
attestation, written upon the back of the
other bond of cautionry, is of this tenor.

‘ **I** A. ----- not only attest the sufficiency of
‘ the within named and designed cautioner,
‘ ner, and bind and oblige me, my heirs and
‘ executors, therefore, but also become cautioner
‘ for him, and bind and oblige me, and
‘ my forefaids, for the sums of money within
‘ in contained, as fully, in all respects, as the
‘ caution-

cautioner himself, except as to the order of
discussing; and I consent that these presents
be registred with the within written bond,
that execution may pass *subsidiarie* hereon
accordingly, and to that effect constitute
the procurator within designed. In witness
whereof, &c.

3. A bond of cautionry in a suspension of
lawborrows is in this form; ' I *A.* bind and
oblige me, &c. as cautioner for *B.* and *C.*
persons complained upon, that *E.* &c. and
their bairns, tenants and servants shall be
harmless and skaithless of the said *B.* and re-
manent persons complained upon, in their
bodies, lands, heritages, tenements, annu-
alrents, liferents, tacks, steedings, rooms,
possessions, and shall noways be troubled by
them therein, nor by no others of their
sending, hounding out, reset, assistance, or
ratihabition, nor by none whom they may
stop or let, otherways than by order of law
and justice, in time coming, and that under
the pains following, *viz.* each nobleman and
noblewoman under the pain of 2000 merks,
other landed men under the pain of 1000
merks, and each unlanded person under the
pain of 400 merks, and that for obedience
of the charge of lawborrows given to the
foresaid persons, for whom I am cautioner,
in case it shall be found, by the Lords of
council and session, that they ought so to do,

E

after

‘ after discussing of a suspension to be obtained in the said matter.’

4. A bond of cautionry for keeping of the peace, is thus; ‘ I *A.* by the tenor hereof, bind and oblige me, &c. as cautioner for *B.* that he shall keep his Majesty’s peace during this current parliament (*a*), and in all time coming, and also that *C.* shall be harmless and skaithless, in his person and goods, good name and gear, and noways troubled by him, nor no others of his causing, sending, hounding out, commanding, reset, assistance, or habitation, whom he may stop or let, directly or indirectly, during the foresaid space, under the pain of ----- to be paid to the said clerk of the court of constabulary, for the use and behoof of the Lord High Constable (*b*) of Scotland, and his deputies.’

5. A

(*a*) Obligations of this kind are now, since the union, done by enactments in the sheriff, or other judges court-books; and, since the taking away of our parliament, bonds of this nature are in desuetude; and this hath been placed here by our author for institution’s sake, as he observes upon some other stiles.

(*b*) Constable is reckoned by some to be the same office that the *comes stabuli* was under the Roman empire; others derive it from the Saxon *coning*, i. e. king, and *staple*, which signifies the stay or hold of the king. By the laws of king *Malcolm*, cap. 6. he was judge to all crimes committed within 12 leagues of the king’s house or habitation; tho’ *Skeen* observes, that the best manuscripts bear only two leagues. But,
when

5. A bond of compearance before a court is in this form; ' I *A.* by the tenor hereof,
' bind

when we had parliaments his jurisdiction was only exercised, either as to crimes, or otherways, during the sitting thereof, which some extended likewise to all general conventions. Sir *George Mackenzie* observes, in his *precedency*, That this officer hath not risen in his precedency to the same proportion with others; and the reason he gives, is, That, of late, our armies have been commanded by other officers, and so there was little use for the constable. His office, beside the cognizance of riots, and other crimes committed within the above limits, during the sitting of parliament, was (the day of riding the parliament) thus performed: In the morning he waited upon his Majesty's high commissioner at the palace, and received his orders, and from thence returned privately; then he came from his own lodging on foot, and narrowly inspected all the rooms under and above the parliament-house; after which he dressed himself in his robes, and, having his batton in his hand, he seated himself in a chair at the entry of the *Parliament-Closet*, at the place where the *Lady's Steps* formerly were, by the outmost of his guards, and, as the members alighted from their horses, he rose from his chair and saluted them, and recommended them to the gentlemen of his guard to be conducted to the marshal's guard, for his guards made a lane from his chair to the door of the parliament-house, and the marshal's guards were all within the house, only, by ancient custom, the constable was allowed six of his guard within the house. When the commissioner came, the constable received him immediately upon his alighting from his horse, and attended him to the marshal's guards, and then both the constable and marshal convoyed him, bare-headed, to the throne, and attended him in the same manner in return to his horse, and rode with him in their robes to

‘ bind and oblige me, &c. as cautioner for B.
 ‘ that he shall compear before ----- in a court

‘ to

the palace, having caps of permission on their heads, the constable being on his right-hand, and the marshal on his left. This office hath not been enjoyed by many families. The *Marvill* family (who founded the abbay of *Dryburgh* in *Berwickshire*, and had a great estate in that county) enjoyed it in king *David I.*'s time; from them it came, by descent, to the old Lords of *Galloway*, and from them, in like manner, to *John Baliol*, and the renowned king *Robert Bruce* conferred it upon Sir *Gilbert Hay* of *Errol*, whose family had its rise, in a remarkable manner, by the battle of *Luncarty* against the *Danes*, in the reign of king *Kenneth III.* and *Charles* Earl of *Errol*, the hereditary descendant of that noble family, was Lord high constable of *Scotland* at the union, who, before the conclusion thereof, made an ample and full protest for the preservation of his rights and privileges, notwithstanding of the said treaty, and craved the same might be engrossed in the books of parliament; which protest see at large in *Crawford's Peerage*.—The badge of this office was a naked sword; which, in the *Roman* empire, was the badge of the office *praefecti praetorio*.

Our kings were of old necessitate to cause castles to be built in divers places of the kingdom for preserving the peace, and the governors of these castles were called *constables*, whose powers varied according to the tenor of their respective commissions, and could only be explained by uninterrupted and immemorial possession, and usual custom; but the powers of these constables are now abrogated by the late act of the *British* parliament, abolishing the several private jurisdictions in *Scotland*.—And, for a farther illustration of this subject, the reader may consult the following decisions in Lord *Stair*, July 18. 1676. Earl of *Kinghorn* contra town of *Forfar*; and, December 9, 1679. Lord *Hatton* contra town of *Dundee*.

‘ to be holden by him within ----- upon -----
 ‘ betwixt two and three in the afternoon,
 ‘ there to underly the law for the crimes li-
 ‘ belled, under the penalty of ----- &c. as in
 ‘ the bond for keeping the peace.’ And if
 the bond for keeping the peace be ingrossed
 after, then say, ‘ And that the said ----- shall
 ‘ be harmless and skaithless, &c.’ It is to be
 noted, that, when these two bonds are ingros-
 sed, there is but one penalty in the bond.

There are other obligations for perform-
 ance of deeds, which, not being ordinarily in
 a writ apart, are adjected to other bonds as
 an obligement, commonly called, *A clause of
 relief*, adjected to a bond for borrowed mo-
 ney granted by a cautioner and a principal,
 and an obligation to grant an heritable bond
 of borrowed money, or the like; for there is
 no simple bond whatsoever, which, according
 to circumstances, may not be adjected to other
 writs.

A clause of relief, which is subjoined and
 incorporated with other writs granted by prin-
 cipal and cautioners, is thus; ‘ Likeas I, the
 ‘ said *A.* bind and oblige me, and my fore-
 ‘ saids, to warrant, free, relieve, and skaith-
 ‘ less keep, the said *C.*, *D.*, and *E.* of the cau-
 ‘ tionry above written; and of all cost, skaith
 ‘ and damage, expences and interest, that they,
 ‘ or either of them, or their foresaids, shall
 ‘ happen to sustain or incur therethrough in
 ‘ any sort; and we, the said cautioners, bind

‘ and oblige us, *hinc inde*, to others, and out
 ‘ forefaids, to warrant, and equally to relieve
 ‘ others of the premiffes, and of what da-
 ‘ mage, interest and expences fhall be fustain-
 ‘ ed thereby, each of us for our own parts *pro*
 ‘ *rata*.’ This mutual relief is only subjoined
 where there are two or more cautioners.

An obligation to grant an heritable fecur-
 rity, adjected to a fimple bond of borrowed
 money, is in this form; ‘ And for farther
 ‘ fecurity thereanent, I bind and oblige me,
 ‘ and my forefaids, to grant, fubfcribe, and
 ‘ deliver to the faid *B.* whensoever I fhall
 ‘ be defired, a valid and fufficient heritable
 ‘ fecurity for the faid debt, out of all or
 ‘ any part of my lands and eftate within this
 ‘ kingdom, wherever the fame ly, and that
 ‘ either by granting a wadfet, or an infeft-
 ‘ ment of annualrent, as he fhall think fit,
 ‘ to be holden either of me and my heirs,
 ‘ or from me of my immediate fuperiors,
 ‘ blench or feu, as may beft fubfift with the
 ‘ laws of this kingdom, and with all neceffary
 ‘ and ufual claufes, that any lawyer to be na-
 ‘ med by the faid *B.* fhall think juft and rea-
 ‘ fonable, and to caufe extend the forefaid
 ‘ fecurity; and give fafine thereupon, or ex-
 ‘ pede an infeftment by refignation or con-
 ‘ firmation, as he fhall think fit; and all upon
 ‘ my own proper charges and expences, with-
 ‘ out prejudice always of the perfonal obligе-
 ‘ ment above written, or fuiting execution
 ‘ thereup-

'thereupon at the term of payment above mentioned, or at any time thereafter, without requisition.'

The form and stile of other bonds as well for payment of money, as for performance of deeds, are set down in the section which treats of compound bonds.

Of DISCHARGES and ACQUITTANCES simple.

HAVING treated of obligations simple, occasion offers to explain the conveyances and assignations of the things in the obligation; but, before we treat of those, it is proper to give the stile of discharges granted by the creditor.

A discharge is an acquittance in writing, of a sum of money, or other duty, which ought to be paid, or done; as, if one be bound to pay money due by a written obligation, or otherways, the creditor, upon the receipt thereof, or upon other agreement, signs a writing in discharge thereof, testifying that he is paid, or otherways satisfied, and therefore doth acquit and discharge him of the same, which discharge wholly extinguishes the obligation or ground of debt.

This word differs from *Acceptilation* in the civil law, or *Apocha*, because *Acceptilation* may be by writing or without it, and is no other

other than a simulate payment and discharge, though no payment be made; and *Apocha* is a writing witnessing the payment, which, nevertheless, dischargeth not, unless money be truly delivered.

He to whom the obligation is granted, or others having his right and power, can grant discharge, as the creditor's heir, executor, assigny, factor, tutor and curator.

Not only the debtor, or those who represent him, and are liable in payment of his debts, or others to whom the management of the debtor's affairs are committed; such are the debtor's heir, executor, successor in his estate disposed with the burden of debts, factors, tutors and curators, but also strangers, who have no manner of relation to the debtor, can procure a discharge of a debt or obligation, which will be equally steadable and valid.

There is no great variety in the stile of discharges occasioned through the diversity of obligations, or the subject matter contained in the bond, because it is narrated, and the discharging or acquitting words are applied to the bond, and words therein, or to the species of the obligation, which may arise *ex facto*.

Discharges are either of the annualrent alone, or of the annualrent and principal sum, and of the whole obligation.

A dis-

A discharge of annualrent is in this form :

I *A.* grant me to have received from *B.* the sum of 50 pounds *Scots* money, as the due and ordinary annualrent from *Whitsunday* 1751, to *Whitsunday* last bypast 1752, of the principal sum of 1000 pounds money forefaid, contained in and due by a bond granted by him to me, of the date-----
Therefore I, by these presents, exoner, quitclaim, and simply discharge the said *B.* his heirs and successors whatsoever, of the annualrents of the forefaid principal sum due at and preceeding the said term of *Whitsunday* last bypast, and obliging me, my heirs and executors, to warrant this discharge at all hands, and against all deadly, as law will.
I consent to the registration hereof, &c.

This stile is the same, with a little variation, when more annualrents are paid; for, instead of half a year's annualrent, say two, three or four years, from *Whitsunday* to *Whitsunday*, or indefinitely, as the annualrent from *Whitsunday* 1745, to *Whitsunday* 1764, &c.

If retention (*a*) is to be allowed, then say,

As a year's annualrent (after deducing retention)

(*a*) This alludes to several temporary laws made in the reigns of king *Charles I.* and *II. William* and *Mary*, and Queen *Anne*, for granting a supply to their majesties, whereby those owing money had retention of so much out of their annualrents, in order to make the

'tention) from *Whitsunday* 1763, to *Whitsunday* 1764, &c.

When the whole bond is satisfied, the money is either paid by the principal, in which case, if the bond has not been registered, and diligence done thereupon, he either retires the bond simply, and cancels it, without taking any discharge from the creditor, or which is safest, he takes a receipt on the back, thus; ' I the within named *A.* grant and acknowledge, that I have received from the within designed *B.* full and complete payment of the principal, annualrents and liquidate expences due by virtue of the within written bond: Therefore I discharge the same, and whole contents thereof: ' thus; ' Therefore, I discharge the said *B.* and his successors, of the within sums and bonds

the monied part of the nation bear a proportional charge of the government with the landed interest and an ease in the payment of these supplies to the landed men who were burdened with debt, as the annualrent of money was very high in most of the reigns. The last of these acts was in the reign of *Queen Anne*, *Parl. 1. Sess. 4. Cap. 2. anno 1706.* whereby ' every debtor owing money within this kingdom ' at 6 per cent. of interest, had retention in his own hands of a 12th part of 6 per cent. and this retention was to be from *Martinmas* 1706, to *Martinmas* 1707. And the act declares it *usury* for any creditor to refuse to grant the said retention. But, since *Michaelmas* 1714, annualrents have been at 5 per cent. without any retention; so any clause of this nature is at present unnecessary.

and whole contents thereof, for ever. In witness whereof, &c.

If the bond be registred, and horning executed thereupon, the discharge is on a writing apart, thus; ' I *A.* grant me to have received from *B.* full and complete payment of the principal sum of 1000 pounds *Scots* money, and of the annualrents of the said principal sum, due from *Whitsunday* 1763, to *Whitsunday* 1764, contained in, and due by his bond granted to me, dated, &c. registred in the books of council and session, &c. Therefore I, by these presents, exoner him, and his successors whatsoever, of the foresaid principal sum, and annualrents thereof, due at and preceeding the date hereof, and of 200 pounds of liquidate expences, contained in, and due by the bond above specified, together with the foresaid bond-itself, letters of horning raised thereon, and executions thereof, with all that has followed or can follow thereon: Which discharge, I oblige me, and my heirs whatsoever, to warrant to the said *B.* to be to him and his forefairs, a sufficient exoneration of the premisses, at all hands, and against all deadly. Likeas I have instantly delivered to him the extract of the foresaid bond, with the letters of horning raised thereupon, to be cancelled and destroyed at pleasure.'

Upon

Upon producing this discharge at the register, before the bond be recorded in a book, at least within six months after date of the extract, and upon paying a small gratuity to the servant of the office, the principal bond is got up, of which receipt (mentioning the discharge) is given, and all the extracts, one or more, which must be given back, are cancelled.

When the debtor is denounced, he must be relaxed; the clause to be inserted in the discharge for obtaining relaxation, without caution or consignment, is to be found below, among the clauses adjoined to compound discharges.

If real diligence has been raised on the bond, or if the debt be paid by the cautioner, the discharge is in a writing apart, and is a compound security, which shall be treated of hereafter.

Discharges, either of principal or annual-rents, may not only be granted by the creditor himself, but also by his factor, who has either a general mandate and commission, or a special one: All which might be treated of here, did not my designed method oblige me to refer to another place, the treating of factories and commissions, which I look on as compound writs: But because there are some commissions, called *procuratories* and *precepts*, which are adjoined to, and are parts of compound writs, it is convenient to give the
style

style of such, especially in this place, because they are writs which are never found alone, and by themselves, but are always adjected to compound writs. These which we shall take notice of are procuratories of resignation *in favorem*, and *ad remanentiam*; procuratory to serve heir and procuratory of resignation conjoined; and, *lastly*, precepts of warning, and of sasine. Of which in order.

Of PROCURATORIES of RESIGNATION.

A Procuratory of resignation *in favorem*, adjected to a disposition, is thus; ‘ And, for effectuating the foresaid investment by resignation, I, by these presents, make and constitute ----- and each of them, conjunctly and severally, my very lawful and irrevocable procurators, for me, and in my name, to resign, surrender, overgive and deliver: Likeas I, by these presents, resign, surrender, overgive and deliver, all and whole (*Here the lands are repeated*) lying, as said is; together with all right, title, interest, claim of right, property and possession, petitory and possessory, that I, my heirs and successors, had, have, or any ways may claim or pretend thereto, or to any part thereof in time coming, *in the hands* of my immediate superior, or superiors, of the same, presently being,

F

‘ or

‘ or that shall happen to be for the time, or
 ‘ of his or their commissioners, having power
 ‘ to receive resignations in his or their names,
 ‘ *in favour*, and for new infeftment of the
 ‘ same, to be made and granted to the said B.
 ‘ his heirs or assignies whatsoever, heritably
 ‘ and irredeemably, as said is; and thereupon
 ‘ acts, instruments and documents needful to
 ‘ ask, lift and raise, and generally all and sundry
 ‘ other things concerning the premises to
 ‘ do, use and exerce, which to the office of
 ‘ procuratory, in such cases, by the law and
 ‘ custom of *Scotland*, is known to appertain,
 ‘ and which I might do myself if I were personally
 ‘ present, promising to hold firm and
 ‘ stable all and whatsoever things that my said
 ‘ procurators, or any of them, in the premises
 ‘ lawfully does, or causes to be done, without
 ‘ revocation.’

When a disposition of lands is made by an
 apparent heir, who is not infeft, there is ad-
 jected to the right a procuratory for serving
 the disponent heir to his predecessors, and for
 resigning, thus; ‘ And because I am not as
 ‘ yet infeft and seized, as heir to the said de-
 ‘ ceased D. my brother, in the lands, barony,
 ‘ and others above disposed; therefore, and
 ‘ also for making of the resignations after
 ‘ mentioned, I, by these presents, make and
 ‘ constitute ----- and each of them, conjunct-
 ‘ ly and severally, for me, and in my name,
 ‘ to purchase and procure brieves forth of our
 ‘ sovereign

'sovereign Lord's chancellor, for procuring
 'me to be duly and lawfully retoured nearest
 'and lawful heir male to the said deceast *D.*
 'my brother, in the lands, barony, &c. a-
 'bove disposed, or to any other of my pre-
 'decessors who died last vested and seized
 'therein, and to raise, and to cause proclaim
 'the brieves for that purpose, and to expedite
 'the service, and to compare for me thereat,
 'and to return the same to the chancellor,
 'and to take instruments, and to do all o-
 'ther things requisite concerning the serving
 'me heir in special, and heir in general, to
 'the deceast *D.* my brother, or others my
 'predecessors, which I might do myself if I
 'were personally present; and afterward to
 'procure me infest therein, by raising pre-
 'cepts upon the said service, and to cause
 'register my assise: And I being so infest
 'and seized, with power to my said procura-
 'tors, conjunctly and severally, as said is, now
 'as then, and then as now, to resign, &c.
 'Likeas I, as if I were already infest in all of
 'them, and then as now, by these presents,
 'resign, &c.'

When the disposition of the lands is to the
 superior, the procuratory of resignation is *ad*
remanentiam, thus; 'To resign, &c. in the
 'hands, and in favour of the said *B.* and his
 'forefairs, *ad perpetuam remanentiam*: To
 'the effect, that my right of property being
 'consolidated in his person, with his own right

‘ of superiority of the same, all and hail the
 ‘ lands, &c. and others above expressed, so
 ‘ holden, may remain and abide with him, and
 ‘ his foresaids, heritably and irredeemably,
 ‘ perpetually in all time coming : And there-
 ‘ upon acts, &c.

If the lands be disposed to the superior and his wife, the resignation *ad remanentiam* must be thus ; ‘ In the hands, and in favour of the
 ‘ said B. and his foresaids, *ad perpetuam remanentiam*, and in favour of his said spouse, for her life-ent-use, as said is : To the effect, that my right of property may remain and abide with him, and his said spouse, for her life-ent-use ; which failing, with his heirs and assignies, &c.’

If part of the lands disposed hold of the buyer and purchaser, and other part thereof hold of another superior, then the two procuratories *in favorem* and *ad remanentiam* are adjoined, containing their respective lands ; but, if it be dubious which lands hold of the purchaser, then all are contained in the procuratory of resignation *in favorem* : And, immediately after the clause, *In favour, &c. in due and competent form*, the resignation *ad remanentiam* is subjoined, thus ; ‘ And if it shall
 ‘ be found, that any of the said lands, &c.
 ‘ above disposed, with the pertinents, do hold
 ‘ immediately of the said B. in that case,
 ‘ with power to my said procurators, conjunctly and severally, as said is, to resign, &c. as

‘ I resign, &c. such parts and portions of the
 ‘ lands, and others above disposed, that shall
 ‘ be found to be so holding, with all right, &c.
 ‘ in the hands, &c. and in favour, &c.

Of PRECEPTS.

PRECEPTS directed by heritors, and persons
 infest, to their baillies and officers, are
 a sort of commissions, and very like unto pro-
 curatories, such as precepts by an heritor for
 warning away tenants, and precepts of sasine
 adjoined to a disposition for infesting the pur-
 chaser.

PRECEPTS of WARNING.

‘ **A.** Heritable proprietor of the lands, and
 ‘ others underwritten, to ----- exe-
 ‘ cutors hereof, conjunctly and severally, greet-
 ‘ ing: It is my will, and I desire you, that,
 ‘ incontinent this my precept seen, ye pass,
 ‘ forty days preceeding the term of *Whitsun-*
 ‘ *day* next to come, and lawfully warn, con-
 ‘ form to the act of parliament made concern-
 ‘ ing warning of tenants to remove from lands,
 ‘ the persons after named, pretended tenants
 ‘ and possessors of the lands and others under
 ‘ written, viz. *(Here insert the names of*
the tenants, and of the lands, as in the tacks,

or in the heritor's rights) to flit and re-
 move themselves, their wives, bairns, fa-
 milies, servants, sub-tenants, cottars, goods,
 and gear, forth and from the said lands, and
 others above written, with the pertinents,
 and to desist and cease from them, and leave
 the same void and redd at the said term of
Whitsunday next to come, each of the said
 persons for their own parts, so far as they
 occupy thereof: To the effect, that I, my
 tenants, servants, and others in my name,
 may enter thereto, peaceably bruik, joice, oc-
 cupy, labour and manure, set, use and dispose
 thereupon as my heritage, at my pleasure,
 in time coming, conform to my investment
 and sasine thereof; and that ye use the whole
 remanent order of warning against the fore-
 named persons, for removing from the
 lands, and others above specified, prescri-
 bed by the acts of parliament made there-
 anent: Certifying them, if they do in the
 contrary, and continue to occupy, labour
 and possess the lands, and others foresaid,
 after the said term of *Whitsunday* next to
 come, they shall be holden and reputed vio-
 lent possessors thereof, and compelled to
 make payment of the violent profits of the
 same with all rigour. According to justice, as
 ye will answer to me thereupon. The which
 to do, I commit to you, conjunctly and se-
 verally, my officers in that part, my full
 power,

power, by this my precept, (written by----)
and subscribed by me at-----

The act of parliament, to which the precept refers, is *Act 39. Parl. 6. Queen Mary 1555*, and ordains warning to be made at the door of the parish kirk, within which the lands ly, on a *Sunday*, Forty days preceeding *Whitsunday*, in the forenoon, in time of divine service, and some writers insert in the precept that order, which may be done thus ;
And siklike, that, upon a *Sunday*, forty days preceeding the said term of *Whitsunday*, in the forenoon, that ye pass to the said parish-church of *B.* within which the said lands ly, and openly, in time of divine service, read, or cause to be read, this my precept, and lawfully warn the said-----and all others having, or pretending to have interest, to flit and remove themselves, and their families, as said is. And that ye affix and leave a just copy of these presents upon the most patent door of the said church, that none pretend ignorance of this my lawful warning ; and that ye use the whole remanent order, &c.' (a)

Precepts

(a) For the greater ease of those employed in executing precepts of this kind, I have thought proper to add here the stile of the short copy for the tenant, with the officer's execution,

Short

Precepts of sasine subjoined to dispositions
bonds for infeftment in an annualrent, or
other

Short Copy for the Tenant.

‘ I ——— officer, in that part specially constitute,
‘ by the precept of warning aftermentioned, directed to me by *A.* heritable proprietor of the lands
‘ of ——— conform to the said principal precept
‘ signed by him, of the date the 27th *March* 1764
‘ years, do hereby, and by virtue thereof, warn you
‘ *F.* to sit and remove yourself, wife, bairns, family,
‘ servants, sub-tenants, cottars, goods and gear, forth
‘ and from (*Here insert the lands as in the precept*)
‘ and to leave the same void and redd at the term of
‘ *Whitsunday* next to come, to the effect that the said
‘ *A.* as heritor thereof, his tenants, servants, and o-
‘ thers in his name, may enter peaceably thereto at
‘ the said term; with certification in manner mention-
‘ ed in the said principal precept of warning. This
‘ I give you upon the 28th day of *March* 1764 years,
‘ before these witnesses.

Execution of the said precept.

‘ U Pon the — day of ——— 1764 years, I —
‘ officer in that part specially constitute, by vir-
‘ tue of the within written precept of warning, passed
‘ to the dwelling-house of the within designed *F.* pre-
‘ sent tenant and possessor of the lands of ——— and
‘ also to the ground of the said lands, and lawfully
‘ warned, conform to the act of parliament made a-
‘ gent warning of tenants to remove from lands in
‘ all points, the said *F.* to sit and remove himself,
‘ his wife, bairns, family, servants, sub-tenants, cot-
‘ tars, corns, cattle, goods and gear, forth and frae
‘ the said lands, with the pertinents, and houses,
‘ and yards, and others thereto belonging, and to
‘ leave

other heritable right, are in this stile: ' And, ' *lastly*, to the effect the said *B.* may be presently infeft in the lands, and others above disposed, I, by these presents, desire and require you ----- and each of you, conjunctly and severally, my baillies in that part, to the effect after specified, specially constitute, that, immediately after sight here-
' of,

' leave the same void and redd at the term of *Whitsunday* next to come, to the effect the within designed *A.* and his tenants, and others in their names, may enter thereto, and peaceably possess, bruik, occupy and labour the same at their pleasure. And sikelike, upon the — day of — — and year foresaid, being *Sunday*, I passed to the parish-kirk of — — within which parish the said lands ly, and at the most patent door thereof, at the dismissing of the congregation from the forenoon sermon, after crying of three several voyces, I read and made public intimation of the within precept of warning, in audience of the parishioners convened thereat for the time, and made certification as is within expressed. This I did conform to the said principal precept in all points, whereof I delivered a just copy, signed by me, to the said *F.* personally apprehended; and I affixed and left the like copy upon the ground of the said lands, upon the — day of — — and I also affixed and left another copy upon the most patent door of the said kirk, upon the said — day of — — that none pretend ignorance of the same: All which copies did bear and contain the respective dates hereof, and the witnesses names and designations present at the hail premisses, *viz.* at the dwelling-house, and upon the ground of the said lands, *M.* and *T.* and at the church-door *J.* and *G.* and, for the more verification of this my execution, the same is subscribed by me and the said witnesses.

‘ of, ye pass, and give heritable state and sa-
 ‘ fine, with possession corporal, actual and real,
 ‘ of all and sundry the lands, mills, tithes,
 ‘ patronages, and others above and underwrit-
 ‘ ten, viz.’ (*Here repeat the lands, &c. as in*
 ‘ *the dispositive clause, or rather as in the pro-*
 ‘ *curatory of resignation*) ‘ to the said B. or to
 ‘ his certain attorney in his name, bearer
 ‘ hereof, by deliverance of earth and stone
 ‘ of the ground of the foresaid lands *respec-*
 ‘ *tive*, and of claps and hoppers of the said
 ‘ mills, and of an handful of grass and corn for
 ‘ the said tithes, and of a psalm-book for the
 ‘ said patronage, &c. as use is in the like,
 ‘ conform to these presents, and infestment
 ‘ to follow hereupon, or either of them, and
 ‘ to be holden either of me, or from me of
 ‘ my immediate superiors, in manner above
 ‘ expressed, and that this on no ways ye leave
 ‘ undone. The which to do, I commit to
 ‘ you, conjunctly and severally, my baillies in
 ‘ that part foresaid, my full power, by these
 ‘ presents.’

Of ASSIGNATIONS.

IF the debt be not paid, and the bond be
 not discharged, the same may be conveyed
 to any person, which is done by an assignati-
 on.

An assignation is a writ of conveyance, and applied only to such as relate to moveable sums, rents, or duties; for, when other moveable goods, as plenishing, merchandize, or the like, are conveyed, the writ is called a disposition to moveables.

He who grants the assignation is called the *cedent*, and he who receives it is termed *cessioner*, or assigney.

The stile of a simple assignation to a moveable bond, whereupon no diligence has been raised, is thus; ‘ I *A.* for the sum of two thousand pounds *Scots*, with the annual rent thereof from, &c. paid and delivered to me by *B.* wherewith I hold me well contented and satisfied, and exoner, quit-claim, and simply discharge him, his heirs and executors, of the same, renouncing all exceptions that can be proponed or alledged in the contrary for ever, by these presents, make and constitute the said *B.* his heirs and donatars, (secluding his executors) my very lawful and irrevocable cessioners and assignies, in and to the sum of two thousand pounds money foresaid of principal, and three hundred pounds money above written of liquidate expences, contained in a bond granted by *C.* to me, my heirs, executors or assignies, of date-----and in and to the annual rent of the said principal sum, from-----in time coming, during the not-payment
‘ the-

thereof, and in and to the foresaid bond,
 whole tenor and contents thereof, with all
 that has followed, or may follow thereup-
 on, *surrogating and substituting* the said B.
 in my full right and place of the premisses,
 for now and ever, with power to him, or
 his forefaids, to ask, crave, receive, intro-
 mit with, and uplift the sums of money,
 principal, annualrent, and expences above
 assigned, at their own hands, and to dispose
 thereupon at their pleasure, and to grant
 discharges in their own names, upon the
 receipt thereof in whole or in part; and, if
 need be, to cause register the foresaid bond,
 and use all manner of legal diligence for
 recovering payment of the sums abovemention-
 ed, compone, transact, and agree there-
 anent; and generally all and sundry other
 things concerning the premisses to do, use
 and exerce, that I might have done my-
 self before granting of this assignation.
 Which assignation, I bind and oblige me, my
 heirs and executors, to warrant to the said B.
 and his forefaids, from all facts and deeds
 done, and to be done by me or my fore-
 faids, prejudicial hereto allenarly, *to wit,*
 that I have not made or granted, and that I,
 nor my forefaids, shall not make nor grant
 any assignation, or other right or discharge
 of the premisses assigned, that may be hurt-
 ful or prejudicial hereto in any sort. Like-
 as I have instantly delivered to the said B.

the

the bond above mentioned unregistred, to be kept and used by him and his forefairs, as their own proper evident, at their pleasure, in time coming. Registred, &c.'

The stile of translations and retrocessions shall be given hereafter, when we come to treat of compound writs.

In assignations and translations granted by minors, with consent of curators, the minor, with consent foresaid, obliges himself to warrant the right from proper fact and deed, and in that stile the explication of the warrandice is seldom insert: As also, the curators oblige themselves, thus; 'And I, the said C. (the curator) bind and oblige me, my heirs and executors, not only to warrant the premises from my own proper fact and deed allenarly, but also to cause the said A. and, failing of him by decease, his nearest heirs, to ratify these presents at their majority, and perfect age of twenty one years complete; and, if need be, to reiterate and renew the same, keeping the substance above written.'

When there is money paid for granting an assignation, it is either specially expressed, or in general terms, thus; 'For a certain sum of money,' and no more; and when special, thus; 'For the sum of ----- or, ----- 'For a certain sum of money equivalent to the sums hereafter assigned.' In both which cases there must be a receipt of the money, and a discharge thereof, and a renunciation of

all exceptions, as in the preceeding stile of an assignation.

When part of the principal sum contained in the original bond being paid, the remainder is assigned, the sums are mentioned in the assignation in this manner ; ----- ‘ In and to
 ‘ the sum of two thousand nine hundred eighty seven pounds, only resting of the principal sum of four thousand pounds, and to a
 ‘ proportional part of the sum of four hundred pounds of penalty effeiring thereto,
 ‘ contained in a bond granted by ----- to me,
 ‘ of the date, &c. and to the annualrent of
 ‘ the said sum of two thousand nine hundred
 ‘ eighty seven pounds, during the not-payment
 ‘ of the same, and in and to the said bond,
 ‘ &c. with all that has followed or may follow thereupon, in so far only as may be extended to the sums of money, principal, annualrent and penalty above assigned, for now
 ‘ and ever, &c.’

An assignation made by a liferenter to the fiar of moveable sums provided to her in liferent, and contained in bonds granted to her, and to the fiar, are much of the same form and tenor with the common and ordinary assignations, and is thus.

‘ I *A.* for divers onerous causes and considerations moving me, by these presents, make
 ‘ and constitute *B.* &c. my cessioners and assignies, in and to my liferent-right of the
 ‘ sums of money after specified, and annual-
 ‘ rents

'rents thereof, whereunto I am provided du-
 'ring my lifetime, conform to the bonds af-
 'ter mentioned, granted by the persons after
 'named, each of them for their own parts, as
 'is after divided, *to wit*, the sum of -----
 'as principal, and the sum of ----- of li-
 'quidate expences, contained in a bond grant-
 'ed by ----- for my liferent-use allenar-
 'ly, and to the said *B.* his heirs, executors
 'or assignies, in fee, of the date ----- (*In*
 '*like manner deduce the rest of the bonds*)
 'And in and to my liferent-right of the or-
 'dinary annualrent of the said principal sums,
 'of all years and terms bygone resting un-
 'paid, and in time coming during the not-
 'payment thereof; and to the foresaid bonds
 'themselves, whole clauses, obligations, te-
 'nors and contents of the same, conceived,
 'or that may be interpreted in favour of me,
 'with all that has followed, or may follow
 'thereupon; and to all action, &c.' in the
 'ordinary stile. The clause of delivery in
 'this case commonly bears, so many of the
 'bonds to be delivered as the cedent had in her
 'custody.

An assignation to accompts is in this stile,
 '----- assignies, in and to what money and
 'other profit shall be found due to me, upon
 'the result of accompt and reckoning be-
 'twixt me and *B.* surrogating, &c. with
 'power to uplift, discharge, and pursue for

‘ the same, and transact thereanent.’ In common form.

When a bond is taken in the name of a trustee, and by him assigned to the truster, the assignation, when there is no diligence raised on the bond, is in this stile.

‘ I *A.* acknowledge and confess, that-albeit
‘ my name be insert in the obligation after-
‘ mentioned, yet the same was in trust, and
‘ the sums contained therein do truly and
‘ properly belong to *B.* to whom I have de-
‘ livered the annualrents thereof, which were
‘ resting preceeding the term of *Whitsunday*
‘ last bypast, in respect the principal sum was
‘ really lent by him, and my name was only
‘ borrowed thereto: And therefore I, by the
‘ tenor hereof, make, constitute and ordain
‘ the said *B.* his heirs, &c.’ In common
form.

An assignation to bygone tithe-duties, in a simple form of stile, is thus; ‘ I *A.* do hereby
‘ by freely assign and dispone to *B.* his heirs
‘ and donatars, the whole tithe-duties resting
‘ to me, for myself, or as having right from
‘ my predecessors, of the lands of -----
‘ and that of all years and crops resting un-
‘ paid, preceeding the crop and year 1764.
‘ with power to him, or his forefaids, to up-
‘ lift and discharge the same; and, if need be,
‘ to call and pursue therefor, and to do what
‘ else is requisite for recovering payment
‘ thereof, that I might have done myself be-
‘ fore

‘fore the granting of this assignation, which I
 ‘ shall only be obliged to warrant from my own
 ‘ proper fact and deed allenary: Declaring,
 ‘ That, if there be any receipts or discharges
 ‘ granted by me, or my chamberlains, of the
 ‘ said tithe-duty, preceeding the year 1764,
 ‘ the same shall not infer a breach of this
 ‘ warrandice, this assignation being only grant-
 ‘ ed for such years thereof as are resting.’

From these few examples it is easy to form
 a stile of an assignation in any other case:
 And what is needful to be said farther, con-
 cerning assignations, is referred to the follow-
 ing part.

Of COMPOUND, WRITS *and* SECURITIES.

BY compound writs I understand all those
 wherein another writ is narrated, which
 contains an accumulation of divers sorts of
 securities, and which commonly begin with,
 ‘ Be it known to all men, &c. having a nar-
 rative beginning with this word, ‘ Forasmuch-
 ‘ as, &c.’ and a subsumption in these words,
 ‘ And now seeing, &c.’ with an induction
 thus, ‘ Therefore wit ye me, &c.’ And be-
 cause compound writs are so called from the
 various parts they consist of, before we pro-
 ceed to speak of those, it is necessary to give
 G 3 some

some general rules and examples how simple writs are abridged and narrated.

In abridging of bonds, discharges, &c. of any sort, when they are subjoined to other writs, all the essential clauses must be expressed; for they cannot be abridged otherways than by omitting the exegetic and synonymous words, and those clauses which are only explicatory, and ampliations of others; all which are fully expressed when the bond, discharge, &c. is in a writ by itself.

In narrating simple bonds, and other simple writs, the same rule is to be noticed; for various forms are used, according to the design of the paper in which they are narrated; for sometimes one clause is more particularly respected, and sometimes another: But this is more particularly applicable to the narrating of compound writs.

A bond of borrowed money may be thus narrated in the beginning of another writ:
 ' Forasmuchas *A.* by his bond, dated ———
 ' bound and obliged himself to have paid to
 ' *B.* the sum of 12000 pounds *Scots* of bor-
 ' rowed money, as principal, with annualrent
 ' from *Martinmas* preceeding the date of the
 ' bond, and that at *Martinmas* in the year
 ' 1764, with 800 pounds money foresaid of li-
 ' quidate expences in case of failzie, and with
 ' the annualrent of the said principal sum, so
 ' long as the same should remain unpaid after
 ' the term of payment aforesaid, as the said
 ' bond

'bond, registred in the books of council and
'session, and a decret of the Lords thereof
'interponed thereto, upon-----more fully
'proports.'

If the bond be narrated in letters of horn-
ing at the creditor's instance, it is not men-
tioned that the debtor bound himself, and his
heirs and executors, nor that the money was
payable to the creditor's heirs or assignies;
it is otherways if the bond be mentioned in
a conveyance, or if the horning be at an af-
signey's instance, or if the bond be narrated
in any summons against the debtor's succes-
sors.

A common bond, and the sums therein con-
tained, in the dispositive clauses of assignati-
ons, are thus narrated:----- 'Assigney in and
'to the sum of-----of principal, and twenty
'pounds of liquidate expences, contained in
'a bond granted by C. to me, my heirs or af-
'signies thereanent, dated, &c. and annual-
'rent of the said principal sum since the term
'of -----, and in time coming during the
'not-payment thereof, and in and to the fore-
'said bond itself, &c.'

But when the bond is mentioned in the
narrative of the right of conveyance, the
same is, in the dispositive clause, thus brief-
ly expressed;--- 'Assigney in and to the sum of
'200 pounds, and 20 pounds of liquidate ex-
'pences, and the annualrent of the said prin-
'cipal

‘ cipal sum, from, &c. and in and to the fore-
 ‘ said bond, and whole tenor, &c.’

A bond of provision may be thus narrated:
 ‘ --- Forasmuch as I, by my bond of provisi-
 ‘ on, of the date, &c. bound and obliged
 ‘ me, &c. to make payment to-----, my
 ‘ children, of the sum of-----, to be di-
 ‘ vided among them in manner following, viz.
 ‘ *(Here narrate the particular sums, and other*
 ‘ *parts of the bond, as if it were for borrow-*
 ‘ *ed money.)*

In narrating all sorts of simple bonds, dis-
 cretion, and the scope of the writ in which
 they are to be narrated, will direct what clau-
 ses are to be more fully expressed; for no es-
 sential one is to be left untouched.

Discharges are narrated thus; ‘ Forasmuch-
 ‘ as *A.* by his discharge of the date, &c. granted
 ‘ him to have received, &c. and therefore, ex-
 ‘ onered and discharged the said-----’ as is
 mentioned in the discharge briefly.

The bond for borrowed money, or any o-
 ther right which has been assigned, being nar-
 rated in a translation or discharge, or other
 conveyance thereof, the assignation is nar-
 rated in this manner:-----‘ Likeas the said
 ‘ *A.* by his assignation, of the date, &c. made
 ‘ and constitute *B.* his heirs or donatars, se-
 ‘ cluding his executors, his very lawful and
 ‘ irrevocable cessioners and assignies, in and
 ‘ to the bond above mentioned, and whole
 ‘ sums of money, principal and annualrents,
 ‘ and

and expences above specified, contained therein, as the said assignation bears.'

Or thus, ----- 'cessioners and assignies, in and to the sum of 8500 merks, and annualrents thereof from the feast of *Lammas* 1764, and the said sum of 1000 merks of penalty, and in and to the obligation for paying, and obligation for infesting, and whole other clauses and obligations therein contained, as in the foresaid assignation at more length is expressed.'

This last assignation to the clause of infestment is only where there is no more than a naked obligation to infest, without either procuratory of resignation, or precept of fasine; for assignations to heritable bonds, whereupon no infestment has followed, are otherways narrated, as shall be told in its proper place; and, if infestment has followed, the right is conveyed by disposition.

Another and more full way of narrating an assignation. 'Likeas *A.* by his assignation, dated, &c. for the causes therein expressed, made and constitute *B.* his heirs and donatars, cessioners and assignies in and to the foresaid three bonds and sums of money, principal, and liquidate expences above mentioned, therein contained, and to the annualrent of the said three principal sums, from the term of *Candlemas* 1764, during the not-payment thereof, and in and to the said three bonds themselves, whole
' heads

‘ heads, clauses, and obligations thereof, with
 ‘ all that has followed or may follow there-
 ‘ upon, as the foresaid assignation more fully
 ‘ bears.’

To supply the defects from the writer’s flu-
 dying brevity, the narrative of every writ
 concludes thus; ‘ As the said bond (discharge
 ‘ or assignation) in itself more fully bears, or
 ‘ proports, or, as in the said bond at more
 ‘ length is contained or expressed;’ and the
 like..

Of HERITABLE BONDS.

AMONG the first of compound bonds I
 give place to an heritable bond, which,
 in the beginning, has the clauses of a simple
 bond, and differs only in that part of the ob-
 ligation which relates to the payment of
 the annualrent, as will appear from the stile
 of both. After the usual clauses of a bond
 of borrowed money, follows, 1. An obliga-
 ment to invest. 2. A procuratory of resig-
 nation. 3. A clause or obligation of war-
 randice in short form. 4. A disposition of
 all casualties of superiority of the said an-
 nualrent holden *de me*. 5. An assignation to
 the mails and duties in so far as extends to
 the annualrent. 6. A declaration that perso-
 nal execution shall not hurt the real right

7. A precept of fasine. 8. A clause of redemption. All which are in this stile.

‘ We *A.* and *B.* by the tenor hereof, grant us to have borrowed, and really received, at *Martinmas* last bypast, from *C.* the whole sum of 20000 pounds *Scots* money, wherewith we hold us well contented and satisfied, and exoner and discharge him, his heirs and executors, of the same, renouncing all exceptions that can be proponed or alledged in the contrary, for ever: Which sum of 20000 pounds, we, by these presents, bind and oblige us, conjunctly and severally, our heirs, as well male as of line, tailzie, conquest, provision, and all others our heirs, successors, executors, and intromitters with our goods and gear whatsoever, renouncing the benefit of the order of discussing them, thankfully to content, pay, and again deliver to the said *C.* his heirs or assignies, (excluding his executors) betwixt the date hereof, and the feast and term of *Whitsunday* in the year 1764, without longer delay together with the sum of 3000 pounds money foresaid of liquidate expences in case of failzie: Together also with the annual-rent and profit of the said principal sum yearly and termly, at two terms in the year, *Whitsunday* and *Martinmas*, by equal portions, beginning the first term’s payment thereof at *Whitsunday* next to come, for the half year’s annual-rent immediately
‘ pre-

' preceeding that term, and so forth termly
 ' thereafter at the terms above specified, by
 ' equal portions, during the not-payment of
 ' the said principal sum, with 100 merks mo-
 ' ney foresaid, of liquidate expences, for each
 ' term's failzie in payment of the said annu-
 ' alrents *toties quoties*, without prejudice of
 ' suing execution hereupon at the term of
 ' payment above specified, or any time there-
 ' after, without requisition, notwithstanding
 ' of the clause of infestment after specified,
 ' and infestment to follow thereupon. *And*
 ' *for further security thereanent*, we the said
 ' A. and B. bind and oblige us, our heirs
 ' and successors foresaid, with all conveni-
 ' ent diligence, and upon our proper char-
 ' ges and expences, to duly and lawfully in-
 ' fest and seise the said C. and his forefairs,
 ' heritably, under reversion, in manner af-
 ' ter specified, in all and whole an annual-
 ' rent of 1000 pounds money foresaid; and
 ' in case annualrents be altered, in such an
 ' annualrent as shall be correspondent to the
 ' foresaid principal sum, conform to the laws
 ' of this kingdom for the time, yearly, to be
 ' uplifted at *Whitsunday* and *Martinmas*, by
 ' equal portions, forth of all and whole (*Here*
 ' *insert the lands out of which the annual-*
 ' *rent is upliftable*) or, forth of any part or
 ' portion thereof, mails, farms, profits, and
 ' duties of the same, and that by two several
 ' infestments, in due and competent form,
 ' the

the one thereof to be holden of us the said *A. and B. respective*, our heirs and successors, and the other to be holden from us, and our forefairs, of our immediate superiors *respective*, of the lands and others above expressed, both in free blench, for payment yearly of a penny Scots money, at the feast of *Whitsunday*, in name of blench-farm, if it be asked, alienarly : *And for effectuating of the foresaid infestment by resignation*, we the said *A. and B.* by these presents, make and constitute ————— and each of them, conjunctly and severally, our very lawful and irrevocable procurators, for us, and in our names, to resign, &c. likeas we, by these presents, resign, &c. all and whole the foresaid annualrent of 1800 pounds, and, in case annualrents be altered, such an annualrent as shall be correspondent to the foresaid principal sum of 20000 pounds, conform to the laws of this kingdom for the time, yearly, to be uplifted at the terms above specified, by equal portions, forth of the lands, barony, and others above expressed, with the pertinents, or forth of any part thereof, readiest mails, farms, profits, and duties of the same, together with all right, title, interest and claim of right, that we, our heirs or assignies, had, have, or anyways may claim, or pretend to the said annualrent, during the not-redemption thereof, *in the hands* of our immediate law-

H

ful

' ful superior or superiors *respective*, of the
 ' lands, barony, and others above expressed,
 ' presently being, or that shall happen to be
 ' for the time, or of his or their commissio-
 ' ners, having power to receive resignations
 ' in his or their names. *in favour*, and for
 ' new inestment of the same to be made and
 ' granted to the said C. and his heirs and as-
 ' signies foresaid, heritably and under reverfi-
 ' on, always in manner after specified, in due
 ' and competent form, and thereupon acts,
 ' instruments and documents, &c. (*as in the*
 ' *stile of a procuratory of resignation*) which
 ' annualrent and lands, baronies, and others
 ' above mentioned, out of which the same is
 ' hereby appointed to be uplifted, we the said
 ' A. and B. bind and oblige us, conjunctly and
 ' severally and our above specified, as said is,
 ' to warrant to be free, safe and sure to the
 ' said C. and his foresaids, from all perils, bur-
 ' dens, impositions, taxations, cesses, supplies,
 ' retentions, and other inconveniencies what-
 ' soever, at all hands, and against all deadly,
 ' during the not-redemption thereof: And
 ' *farther*, in case it shall please the said C. and
 ' his foresaids, to take the foresaid annual-
 ' rent holden of us the said A. and B. in that
 ' case we bind and oblige us, conjunctly and
 ' severally, and our foresaids, to enter and
 ' receive him, his heirs and successors, or a-
 ' ny person to whom he or they shall dispone

the

the same, from time to time, during the not-redemption thereof, vassals to us there-
 intil, and that *gratis*, and freely, without
 any composition or good deed to be paid or
 done therefor, and also to dispone in their
 favour: Likeas now as then, and then as
 now, we by these presents, for us, our heirs
 and successors assign and dispone to them all
 casualties of liferent-escheat, non-entry, and
 other casualties whatsoever that shall happen
 to fall in our hands, as superiors of the said
 annualrent, during the not-redemption there-
 of, and that likeways *gratis*, without pay-
 ment of any money, or other good deed
 whatsoever: And moreover, for the more
 certain and sure payment of the said annual-
 rent, we the said *A.* and *B.* by these pre-
 sents, make and constitute the said *C.* and
 his foresaids, our very lawful and irrevoca-
 ble cessioners and assignies, in and to as much
 of the first and readiest of the mails, farms,
 profits and duties of the whole lands, baro-
 nies, and others above specified, due at
Martinmas next to come, and thereafter du-
 ring the not redemption, as will satisfy and
 pay the foresaid annualrent, in manner, and
 at the terms above expressed, and termly pe-
 nalties thereof in case of failzie, and to all
 action and execution competent to us there-
 for, and surrogate and substitute the said *C.*
 in our full right and place thereof *pro tan-
 to*; which assignation we bind and oblige us,

our foresaids, conjunctly and severally, to
 warrant to the said C. and his foresaids, at
 all hands, and against all deadly : And it is
 hereby declared, That albeit the said C.
 shall use execution hereupon, by hornings,
 adjudication, apprising, or otherways, yet the
 infestment of annualrent above specified shall
 not be hurt nor prejudged thereby, but shall
 continue effectual notwithstanding thereof,
 till the whole sums above specified be paid :
 And to the effect the said C. may be pre-
 sently infest in the annualrent above menti-
 oned, to be holden of either of us the said
 A. and B. or from us of our immediate su-
 periors, or both, or any one of the said
 holdings, the one without prejudice to the
 other, in manner above expressed, we, by
 these presents, desire and require you —
 and each of you, conjunctly and severally,
 our baillies in that part, to the effect after
 specified specially constitute, that, immedi-
 ately after sight hereof, ye pass, and give
 heritable state and sasine, with possession
 corporal, actual and real, of all and whole
 the foresaid 1800 pounds money foresaid :
 and, in case annualrents be altered, of such
 an annualrent as shall be correspondent to
 the foresaid principal sum, conform to the
 laws of this kingdom for the time, yearly
 to be uplifted at the terms above specified
 by equal portions, forth of the lands, baro-

nies, and others above mentioned, with their
 pertinent, or any part thereof, readiest
 mails, farms, profits, and duties of the
 same, to the said C. or to his certain at-
 torney in his name, one or more, bearers
 hereof, by deliverance of earth and stone
 of the ground of the said lands, and also
 of a penny money, as use is in the like
 case, conform to these presents, and inest-
 ment to follow hereupon, or either of them,
 to be holden either of us the said A. and B.
 or of our superiors, as is above expressed,
 and that this on noways ye leave undone;
 the which to do, we commit to you, con-
 junctly and severally, our baillies in that part
 foresaid, our full power, by these presents;
 providing always the said annualrent be re-
 deemable by us the said A. and B. or our fore-
 saids, by payment making to the said C. or his
 foresaids, at *Whitsunday* next to come, or at
 any other term of *Whitsunday* or *Martinmas*
 thereafter, of the foresaid principal sum of
 20000 pounds, with the annualrents there-
 of, and termly failzies of the same, that
 shall happen to be resting for the time,
 and of such expences as he shall deburse
 in procuring an inestment from the supe-
 rior, by resignation or confirmation, or in
 procuring decreets for pointing of the
 ground, or in using of other diligence, con-
 form to an accompt to be given in by them
 to us therefor, without any premonition to

‘ be made by us to him for that effect; and
 ‘ that these presents, or a double hereof, or
 ‘ an extract of the sasine to follow hereupon,
 ‘ shall serve as a sufficient reversion for that
 ‘ effect, notwithstanding of whatsoever act, law,
 ‘ or statute made, or to be made in the con-
 ‘ trary.’ Follows the clause of registration,
 ‘ &c.

The clause of infestment, or the oblige-
 ment to infest, is diversly expressed, according
 to the inclination of the writer, as, ‘ And for
 ‘ the said B. his farther security thereanent,
 ‘ I bind and oblige me, &c.’ Otherways,
 ‘ And we being farther desirous to secure the
 ‘ said C. and his foresaids, concerning the pay-
 ‘ ment to them of the annualrent of the said
 ‘ principal sum, until the repayment thereof;
 ‘ therefore we, by these presents, bind and
 ‘ oblige us, &c.’

I have seen the casualties of superiority all
 taxed and liquidated in this form ———
 ‘ Both in free blench, for payment yearly
 ‘ of a penny *Scots* at the feast of *Whitsunday*,
 ‘ upon the ground of the said lands, if it be
 ‘ asked allenary, and for the payment of two
 ‘ pennies money foresaid for the entry of
 ‘ each heir and singular successor; and like-
 ‘ ways for payment of four pennies money
 ‘ foresaid yearly, during the years that the
 ‘ said annualrent shall happen to fall and to
 ‘ be in non-entry before declarator: Which
 ‘ sum of two pennies money foresaid is agreed
 ‘ unto

unto, and ordained to be the retoured duty
 of the said annualrent, and for payment of
 eight pennies money foresaid, that the said
 annualrent shall ly in non-entry after decla-
 rator, and for payment of six shillings eight
 pennies yearly, for the liferent escheat [of
 the said C. and his heirs and successors, so
 oft as the same shall happen to fall into the
 hands of us, or either of us, our heirs or
 successors: and which liferent-escheat we
 bind and oblige us, conjunctly and several-
 ly, and our foresaids, to dispo[n]e; likeas
 we, *per verba de praesenti*, now, as if the
 said liferent-escheat were already fallen, and
 then as now, for us and our foresaids, by
 these presents, dispo[n]e to the said C. his
 heirs or assignies, or to any other he or they
 shall please to nominate, the same liferent-
 escheats, for the payment of the said sum
 of six shillings eight pennies yearly, during
 the lifetime of that person whose escheat
 shall happen to fall, and that either by re-
 signation, &c.' And in the precept of sa-
 me the same duties were at length expres-
 sed. ——— To be holden either of us,
 and our foresaids, or from us and them, of
 our immediate superiors, in manner above
 expressed, and for payment of the duties
 above mentioned, viz? (*Here they are re-
 peated.*)

When the sum is to be paid upon requisition, the clause of requisition is insert immediately

diately after the term of payment, and before the obligation for the penalty, in this form: — ‘ At *Whitsunday* next, in the year 1764, requisition being always made by them to us, or either of us, — — — which shall be sufficient for both, personally, or at our dwelling-places, in presence of a notary and witnesses as effairs, 40 days preceeding the term at which the money shall be called for, and there being only 10000 pounds required at one term, with the sum of — liquidate expences, &c.’

In the clause of redemption, this relating to the premonition was insert — ‘ And of such expences, &c. The place of redemption to be within the new session house of *Edinburgh*, at that place thereof where the commissaries use to sit in judgment, and the consignation, in case of absence or refusal, to be in the hands of the dean of guild or treasurer of *Edinburgh*, upon the peril and hazard of the consigner, premonition being always made by us to them, 40 days preceeding each term, personally, or at their dwelling-places, in presence of a notary and witnesses as effairs, and that these presents, or a copy hereof, &c.’

In the assignation to the mails and duties, this clause may be insert; ‘ And to cause the tenants of the foresaid lands and barony enact themselves, in a fenced court, for payment of the said annualrent termly as
‘ as it

' it falls due.' This is placed after the ward-
' randice of the assignation.

A writer should know by what kind of
tenor the lands hold of the superior, and so
never to insert a precept of sasine, except he
be sure the lands hold not *ward*, or are no
feu, with a condition *de non alienando*: How-
ever, if part of the lands hold ward, and part
of them otherways, the precept of sasine
' ought to mention only such as are not ward;
but if it be doubtful which are *feu*, which are
ward, a reservation may be adjected to the
precept in this form:----- ' Reserving al-
' ways so many of the foresaid lands and te-
' nantry of-----which hold ward or tax-
' ward, conform to the charters and infest-
' ments thereof; under which exception and
' reservation, the said *C.* is to take infestment,
' and no otherways (*a*).

(*a*) This caution of our author, with respect to lands
holding ward, is now of no use; for all ward-holdings,
by an act of the 20th of king *George II.* are taken a-
way and discharged, whether they be simple or tax-
ward, with the casualties of ward, marriage and re-
cognition consequent thereupon; and all lands that are
now held of any subject superior, whether simple or
tax-ward, are thereby enacted to be turned into feu-
holding, for payment of a certain rent or feu-duty, in
money, victual, cattle, or otherways, yearly, in place
of the said casualties of ward-holding thereby dischar-
ged, and of all services, and shall be so constructed and
deemed to be from and after the 25th *March 1748*,
any law, statute, custom or usage to the contrary in
anyways notwithstanding.

And

If the heritable bond bear infestment of annnualrent, to be taken out of the lands where-

And, in order to ascertain the *quantum* of the feu-duty to be paid yearly, after the said 25th *March*, by the vassals of lands formerly holding ward to the superiors thereof, the Lords of session are empowered, by the act, to consider the difference in value to the vassals of the change of their holdings from ward to feu, and what constant yearly feu-duty payable to the superior will be a reasonable recompence for that value or difference, and thereupon to make an act of sederunt, to continue in force, and to be observed by all the subjects in *Scotland*, until the same be altered by a future act of parliament; and the superiors and vassals are to adjust betwixt themselves, the feu-duties thereafter payable, in place of the said holdings thereby abolished, conform to the rules prescribed by the said act of sederunt; and, in case of any difference arising, the court of session, upon application made to them by bill or petition, either by the superior or vassal, or upon the party defender his being summoned upon 21 days notice, they are, upon the hearing of parties, summarily to determine the *quantum* of the said yearly feu-duty, as shall seem most reasonable to the court; and whatever yearly feu-duty they determine, the same shall be yearly paid at the term of *Whitsunday*, from and after the said 25th *March* in the same manner as if feu-charters had been granted of that date to the vassal upon his resignation, containing such change of holding for payment of the yearly feu-duties so to be modified — And, until such modification be so made by the court of session, the vassal shall not incur any irritancy for not-payment of the feu-duty; and after it is made, the same shall be insert in the renewing of infestments to the vassal, or his heirs or successors; — and no ward-holding is to be created hereafter.

wherein the debtor's wife is infeft in life-rent, it were proper that the wife did not only consent to this bond, but bind herself with her husband through all the real clauses thereof: The ordinary practice bears, That the wife consent to all the clauses and obligations relative to the infeftment, and such bonds should contain obligation to cause the wife ratify her consent or obligations judicially, and the same ought accordingly to be ratified, as shall be fully told when we give the stile of dispositions of lands liferented by a wife.

When the land and estate, out of which the annualrent is to be uplifted, belongs to the wife in property and heritage, then she is mentioned in the clauses of the heritable bond that concern the infeftment, as the principal party, and the husband only consents in the same way as in a disposition of her heritage; the stile of which shall be given in its proper place; from the form of which dispositions one may easily know how to write an heritable bond in the two cases above mentioned.

When

It may not be unnecessary to observe here, that the said act abolishes all single and liferent-escheats, and that the same are not, after the said 25th *March*, to be reckoned forfeited upon any horning or denunciation, nor any process to be competent therefor; ---and this remark may be sufficient for what our author says a-nent gifts of ward, non-entry, and marriage.

When the heritable bond is granted by principal and cautioners, this clause may be insert; ‘ And if I the said *B.* shall make payment of the sums contained in this bond; ‘ in that case the said *C.* and his forefairs, ‘ shall be holden to assign to me the forefairs ‘ infestment upon the said *A.* his estate, with ‘ what diligence has followed thereupon, with ‘ warrandice from their own proper fact and ‘ deed.’ Follows the clause of relief, and ‘ both these are put in the last part of an heritable bond, and before registration.

*Of BONDS and ASSIGNATIONS con-
joined.*

When the creditor thinks the personal security is not sufficient, and the debtor has no real estate, but only moveable, (for the first is always to be preferred) then, to the simple bond of borrowed money, is subjoined an assignation to bonds, or to moveable goods. In the first case the stile is; ‘ And for the said *B.* and his forefairs, their farther security, I the said *A.* ‘ by these presents, assign, transfer and dis- ‘ pone from me, &c. to the said *B.* and his ‘ forefairs above written, as much of the ‘ first and readiest of the sums of money ‘ due to me by whatsoever person or persons, ‘ especially of the money due to me, &c. ‘ or whereunto I may have right from — ‘ any

' any manner of way, as will fatisfy and pay
 ' the fums of money, principal, annualrents
 ' and expences above fpecified, contained in
 ' this bond: *Surrogating* and *substituting* the
 ' faid B. and his forefaids, in our full right
 ' and place thereof *pro tanto* for ever, with
 ' power to him, and his forefaids, to ask,
 ' crave, receive, intromit with, and uplift the
 ' fame, to grant difcharges thereof, in whole
 ' or in part, in their own names, and, if
 ' need be, to call and purfue therefor, and
 ' to ufe all manner of legal diligence for re-
 ' covering payment thereof, and generally
 ' all and fundry other things concerning the
 ' premiffes to do, ufe and exerce, which I
 ' might have done myfelf before the grant-
 ' ing of this prefent affignation: Which af-
 ' fignation and tranflation I bind and oblige
 ' me, and my forefaids, to warrant to the faid
 ' B. and his above fpecified, at all hands, and
 ' againft all deadly.' Follows the claufe of
 ' registration.

In the fecond cafe, when goods are difpo-
 ned, the ftile is-----' by thefe prefents, fell,
 ' affign, and difpone to him, and his forefaids,
 ' all and whole.' Here fet down the particu-
 lar goods, whether cattle, corns, plenifhing,
 or others; and then follows the ftile of a
 difpofition of moveables, as fhall be fhewn
 hereafter.

It were proper that the goods were valu-
 ed, and one bound caution to make them

forthcoming, seeing generally poor debtors are left in the possession of the goods, though disposed, which may be expressed in this or the like stile.

‘ And for securing the right of the said goods, I C. as cautioner, &c. bind and oblige me, &c. that the whole goods above-mentioned, or the values thereof, according to the price above set down, shall be forthcoming to the said B. and his forefairs; and in case any of them be wanting, or spoiled, or deteriorated, or be evicted by other creditors pouncing the same legally, I oblige me to make the same, or as good, or at least the value thereof, forthcoming to him, as accords.’

Of BONDS by factors, and those granted upon a reserved faculty to burden another person and his estate.

THESE obligations which are granted by factors, or those to whom the management of a special business is committed, with power to borrow money for the constituent's use, are very rare and uncommon; however, for institution's sake, know that they may be in this form: They begin with these words, ‘ Be it known, &c.’ Next the factory is narrated, and particularly the power to borrow money.

money. Then it is subjoined, That *C.* upon
 ' the faith of the said factory and power a-
 ' bove mentioned, therein contained, has ad-
 ' vanced and paid to the factor the sum of
 ' 1000 pounds *Scots* money, wherewith he
 ' holds himself well content, &c.' in the stile
 of a bond; ' Therefore wit ye him, as fac-
 ' tor foresaid, and by virtue of the power and
 ' faculty above specified, to have bound and
 ' obliged, likeas, &c. the said *B.* his heirs
 ' and successors whatever, thankfully to con-
 ' tent, pay, and deliver, &c.' as in a bond of
 borrowed money.

It is proper that the bond mention the bu-
 siness and use the money was to be employed
 in, as is set down in the bond granted by the
 deacon and masters of an incorporation.

Like unto this sort of obligation, and which
 are more in use, are bonds granted by persons,
 who, in a disposition of their estate, had re-
 served a power and faculty to burden the said
 estate, and the purchaser thereof, with the
 payment of certain sums. The which bonds
 are in this or the like form.

' Be it known, &c. me *A.* Forasmuch as, by
 ' the contract of marriage past and perfected
 ' at-----upon-----betwixt-----by virtue
 ' whereof, and for the marriage then con-
 ' tracted, and thereafter solemnized betwixt
 ' my said son and the said-----I gave, grant-
 ' ed, and disposed to the said *A.* my said
 I 2 ' son,

' son, and his heirs of tailzie therein men-
 ' tioned, all and sundry the lands and barony
 ' of-----as they are more particularly de-
 ' signed in the foresaid contract, under the
 ' reservations therein specified; particularly,
 ' there is reserved to me, by myself alone,
 ' without the consent of the said *A.* my son,
 ' to burden the said parts of the foresaid lands
 ' and baronies of-----whereof the liferent
 ' is reserved to myself, with the sum of-----
 ' in case I should think fit so to do, payable
 ' to any person or persons I pleased, within
 ' the year and day of my death, with ten
 ' merks of penalty for each hundred pounds
 ' of principal, in case of failzie, and annualrent
 ' of the said principal sum so long as it shall
 ' remain unpaid after the term of payment
 ' foresaid, and to grant bonds bearing infest-
 ' ment, either in property or annualrent, for
 ' farther security thereof, which the said *A.*
 ' and his forefairs are thereby holden to per-
 ' form and fulfil, and which sum of-----
 ' the said *A.* binds and obliges him, his heirs
 ' and successors, to pay to the person or per-
 ' sons to whom I shall appoint the same to
 ' be paid, and that at the term of payment a-
 ' bove mentioned, with the foresaid penalty
 ' in case of failzie, and annualrent for the said
 ' principal sum so long after as the same
 ' should happen to remain unpaid, and that
 ' whether the same be due by moveable or
 ' heritable bond, as in the foresaid contract is

at more length expressed. Likeas, by another contract matrimonial, of the date at ----- betwixt *B.* my second lawful son on the one part, and-----on the other part, by virtue whereof, and for the marriage then contracted, and thereafter solemnized betwixt them, I bound and obliged me, my heirs, successors and executors, betwixt and the term of *Martinmas* last bypast, to pay to the said *B.* my son, his heirs, &c. the sum of---with the sum of---of liquidate expences in case of failzie, with the ordinary annualrent of the said principal sum, from *Martinmas* last bypast during the not-payment of the same, as in the foresaid contract at more length is contained. And I being now resolved to appoint the said 14000 merks, which I am bound to pay to the said *B.* my second son, to be paid out of the foresaid forty thousand merks, wherewith I have power to burden the said *A.* my eldest son, and the lands above mentioned: *Therefore, wit ye me* to have annalized, sold and disposed, *as I*, by these presents, annalizie, &c. to the said *B.* my son, and-----his spoule, and to the longest liver of them two, in conjunct fee and liferent, and to the heirs male lawfully procreated, &c. the sum of fourteen thousand merks, as a part of the said sum of forty thousand merks, with the proportional part of the penalty above mentioned effeiring thereto, and the annualrents of the
‘ said

' said fourteen thousand merks, so long as the
 ' same shall remain unpaid after the year and
 ' day immediately following my decease: As
 ' also the said contract of marriage past be-
 ' twixt my eldest son and his said spouse;
 ' with the reservation above mentioned, con-
 ' tained therein, and obligation granted by
 ' the said *A.* relative thereto, so far as they
 ' may be extended to the said sum of four-
 ' teen thousand merks above mentioned, there-
 ' of, and a proportional part of the penalty
 ' hereby annalized and disposed. *And for far-*
 ' *ther security thereanent*, I the said *A.* and I
 ' the said *a.* bind and oblige us, our heirs,
 ' &c. to make due and thankful payment to
 ' the said *B.* and ————— his spouse, and to
 ' the longest liver of them two in conjunct
 ' fee and liferent, and to the heirs male pro-
 ' created or to be procreated betwixt them,
 ' &c. of the sum of fourteen thousand merks,
 ' and that at the feast and term of ——— with-
 ' out longer delay, with the sum of 1400 *l.*
 ' of liquidate expences in case of failzie; to-
 ' gether also with the ordinary annualrent of
 ' the said 14000 merks, conform to the act of
 ' parliament and custom of this kingdom,
 ' yearly, termly, monthly, and proportional-
 ' ly, so long as the same shall remain unpaid
 ' after *Martinmas* in this year 1764, without
 ' prejudice of suing execution at the term
 ' of payment contained in this bond, or at any
 ' time thereafter, without requisition. *And*

• because

' because
 ' said *A.*
 ' till ye
 ' I the
 ' foresai
 ' the sai
 ' till ye
 ' all cos
 ' that h
 ' sustain
 ' And
 ' my fo
 ' ther,
 ' 14000
 ' of, an
 ' day in
 ' of all
 ' rest, t
 ' to su
 ' fort.'

B
 tion;
 have n
 but ar
 effect,
 mine.

because the said *a.* is not liable to me the said *A.* for the annualrent of the said sum till year and day after my death; therefore, I the said *A.* bind and oblige me, and my foresaids, to warrant, &c. the annualrent of the said principal sum from *Martinmas* next, till year and day after my decease, and of all cost, skaith, damage, interest, and expence that he or his foresaids should happen to sustain or incur therethrough in any sort. *And I* the said *a.* bind and oblige me, and my foresaids, to warrant the said *A.* my father, and his foresaids, of the said sum of 14000 merks, and of the annualrents thereof, and penalties foresaid, after year and day immediately following his decease, and of all cost, skaith, damage, expences, or interest, that he, or his foresaids, shall happen to sustain or incur therethrough, in any sort.

Of QUALIFIED BONDS.

BONDS are either pure or simple, without any quality, condition, or restriction; or they are qualified, that is, they have not so ample effect as the other sort, but are limited, and have only a certain effect, as the provisions in the bond determine.

These

These conditions, restrictions, and limitations are various, according as the party pleaseth: But it is to be noticed, that they are not determined by the debtor in the bond, who is precisely bound to pay the money, but they are formed at the will and determination of the creditor, who may dispose of his own as he pleaseth; though when a man, by way of donation, obligeth himself to pay a sum of money, he may adject to the bond what conditions and qualities he thinks fit.

The forming of pure and unqualified bonds may be known from what has hitherto been delivered. I shall now give examples of qualified bonds, for there may be as many of them as a man may devise of conditions and limitations, which are indefinite: And from the following examples it shall be easy to know how to draw any other qualified bond.

When a man has sold land, against which others may have a claim, and in that case it may be advised that legal diligence will establish a better right than a voluntary disposition, in which circumstance the purchaser buys, with the price, all adjudications, appraisings, and other real rights on the estate, and by a provision in the voluntary disposition he is allowed so to do, and also to impute and ascribe his possession to any one, or to all of these, or to the voluntary right, as he pleases: However, to make up all defects, he

he takes a bond from the feller for a considerable sum of money, at least for the price paid, of design to lead an adjudication; and the bond is in this stile. ' I *A.* by these presents, grant me to have received from *B.* for himself and in name and behalf of his grandchildren afternamed, the whole sum of twenty five thousand merks *Scots* money, whereof I discharge him, and all others whom it effeirs, and renounce all exceptions of the law that can be proponed or alledged in the contrary. Which sum of twenty five thousand merks, with the annualrent thereof, from the date hereof to the term of payment after mentioned, I bind and oblige me, my heirs and successors, executors, and intimatters with my goods and gear whatsoever, to content, pay and deliver again to the said *B.* he being on life, and failing of him, by decease, to——and that betwixt the date hereof and the——day of——next to come, without longer delay, together with the sum of 1200 *l.* money foresaid of liquidate expences in case of failzie, together also with the ordinary annualrent of the said principal sum, conform to the act of parliament and custom of the kingdom of *Scotland*, yearly, termly, monthly and proportionally, so long as the same shall happen to remain unpaid after the day of payment above specified, without prejudice of suing execution hereupon, then, or at any time
 ' there-

' thereafter, without requisition. *It is al-*
 ' *ways hereby provided and declared,* That it
 ' shall not be lawful to the said *B.* nor his
 ' grandchildren, or to any of them, their
 ' heirs or assignies, to use any execution up-
 ' on this bond, personal or real, against any
 ' other estate, real or personal, belonging to
 ' me, my heirs or executors, but allenarly a-
 ' gainst the lands and others after mentioned,
 ' viz. ————— *R.* which lands and others a-
 ' bove mentioned, are sold by me to the said
 ' *B.* and failing of him, by decease, to the said
 ' ————— his grandson, and his heirs; which
 ' failing, to the other substitute heirs men-
 ' tioned in the foresaid disposition: And for
 ' securing them in that purchase, either by
 ' adjudication, or otherways, as they please,
 ' this bond is allenarly granted.' Registra-
 ' tion.

When an apparent heir intends to quarrel
 apprisings, adjudications, and other legal di-
 ligence led against his predecessor's estate, he
 uses to grant a bond for borrowed money to
 a trustee, to the end, an adjudication being
 deduced, there may be a valid and sufficient
 title for quarrelling and reducing antecedent
 diligence, or for proving that the creditors
 therein are paid by intromission. The which
 bond may contain such qualities and conditions
 as this above mentioned.

Another

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Another sort of qualified bonds is, when the sum is tailzied with certain provisions, as when the money is given to a son or daughter, so that it cannot be affected by creditors, in the following example. ‘ Be it known to all men, by these presents, me *A. Forasmuchas*, by a disposition and tailzie of this date, I have disposed to my son *B.* and his heirs male of tailzie and provision therein mentioned, my whole lands and estate therein mentioned, under the reservations, provisions, restrictions and declarations therein specified; and particularly with this provision, That the said *B.* and his forefairs, shall be holden and obliged to pay all just and lawful debts already contracted, or that shall happen to be contracted, and be due by me the time of my decease: And also to pay all sums of money that it should happen me to provide, leave, or bequeath to whatsoever person or persons, at any time in my life, *vel in ipso articulo mortis*, as in the foresaid disposition and assignation at more length is contained. *And I being resolved* that *C.* my second daughter, spouse to — and the children procreated or to be procreated betwixt her and her said husband, shall be secured in 20000 merks Scots money, in manner after mentioned, and under the provision always after specified; *therefore wit ye me* to be bound and obliged, likeas, by the expresse quality
‘ of

of the said disposition and tailzie above men-
 tioned, I bind and oblige me, and the said
 B. my son, and his heirs male of tailzie
 and provision succeeding to my estate, to
 make due and thankful payment of the
 sum of 20000 merks money foresaid, to the
 said C. in liferent, and, after her decease,
 600 merks of the annualrent of the said
 sum yearly to D. her daughter, during
 all the days of her lifetime, and the fee
 of the said whole sum to belong to my
 said daughter's other children, procreated,
 or that shall happen to be procreated be-
 twixt her and the said———equally,
 amongst them, and, failing of any of them
 by decease, to the surviving children, their
 heirs of their own bodies, or assignies for
 an onerous cause; which failing, to return
 to the said B. my son, and his heirs male,
 and of tailzie and provision, succeeding to
 my estate, and that at the terms following,
 viz. 5000 merks thereof at the first *Whit-*
sunday or *Martinmas* next, and immedi-
 ately following my decease, and the de-
 cease of my said daughter, and other 5000
 merks within a year thereafter, and another
 5000 merks within a year after the second
 term of payment, and other 5000 merks,
 in complete payment of the said whole sum,
 within a year after the third term of pay-
 ment, with the sum of 10 merks, for each
 100 merks of the said principal sum, of li-
 quidate

liquidate expences in case of failzie, and with
 the ordinary annualrent of the said princi-
 pal sum, so long as the same shall remain
 unpaid after the first *Whitsunday* or *Martin-*
mas following their decease. *And farther,*
wit ye me, without prejudice of the said
 20000 merks, to have given, assigned and
 disposed, as I, by these presents, give, as-
 sign and dispoise, to the said C. my daugh-
 ter, in liferent, and to the children pro-
 created, or that shall be procreated betwixt
 her and the said ——— except the said
 D. and to their heirs and assignies, and,
 failing of any of them by decease, to the
 surviving children, their heirs or assignies;
 which failing, to the said ——— their fa-
 ther, his heirs or assignies, secluding his
 executors, the sum of 10000 merks *Scots*
 money of principal, with certain liquidate
 expences specified in the bond after men-
 tioned, and annualrents of the said princi-
 pal sum from and after the first *Whitsun-*
day or *Martinmas* immediately following
 my decease, when the same shall happen,
 contained in a bond granted by ——— to me,
 my heirs or assignies, of date the ——— day
 of ——— and also the foresaid bond itself, and
 all that has followed, or may follow there-
 upon, *with this expresse provision and condi-*
tion always. Likeas it is hereby specially
 provided and declared, that the said sum of
 20000 merks, nor this sum of 10000 merks,
 K hereby

' hereby assigned, shall noways be affected
 ' with, nor liable to the said — his *jus ma-*
 ' *riti*, nor to any deeds contracted, or to be
 ' contracted, or done by him; and that it
 ' shall be lawful to my said daughter, by her-
 ' self alone, without his consent, to uplift
 ' and discharge the annualrent of the said
 ' sums, and apply the same to her own use,
 ' as she shall think fitting, during her lifetime,
 ' in respect that the foresaid two sums of
 ' 20000 merks and 10000 merks are freely
 ' gifted and bestowed by me, upon her and
 ' her children, only for the love and kind-
 ' ness which I have and bear to them; and
 ' for that effect I have appointed the annual-
 ' rent of the said sums to be paid to her du-
 ' ring her lifetime, to be disposed as she
 ' shall think fit, and the fee to belong to
 ' her other children, in manner above di-
 ' vided; which failing, as said is. And it is
 ' likeways hereby provided and declared, That
 ' if the said C. my daughter, shall, through
 ' the death of the said — her husband,
 ' come to the possession of her jointure, in
 ' that case the said D. his daughter, is imme-
 ' diately thereafter to enter to the said 600
 ' merks yearly, and the remainder of the
 ' said annualrent of the said whole 20000
 ' merks is to belong to her other children
 ' from that time forth. And I bind and ob-
 ' lige me, my heirs and successors, to war-
 ' rant the foresaid assignation to my said
 ' daughter

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daughter and her children, from my own proper fact and deed allenary, and to deliver to her the bond above assigned, to be kept by her for her own and her childrens use and behoof after my decease. *And, lastly*, I declare that this shall be a valid evidence in favour of my said daughter and her children, which failing, as said is, albeit the same be lying in my own custody, or in the keeping of any other person, undelivered to her the time of my decease, notwithstanding of whatsoever act, law or practise made, or to be made, in the contrary, wherewith I, for me and my heirs, by these presents, dispense for ever.' Registration.

Of BONDS of PROVISION in implement of a Contract of Marriage.

IN the former part you have the stile of simple bonds of provision; now, in this, you are to know the form of those which are in implement of a contract of marriage, and they are in this or the like stile. 'Be it known, &c. me *A. Forasmuchas*, by the contract of marriage made at ——— upon the ——— day of ——— betwixt me on the one part, and ——— my spouse, with advice and consent of ——— on the other part, for the marriage then contracted, and thereafter

K 2

solemnized

• solemnized betwixt us, I bound and obliged
 • me, and my heirs, &c. to have made pay-
 • ment to the children then to have been pro-
 • created betwixt me and my said spouse, of
 • the sum of 60000 merks money of this
 • realm, at the terms, and upon the condi-
 • tions and provisions following, *viz.* If there
 • should happen to be more children of the
 • said marriage than one son, in that case the
 • foresaid sum was to be divided amongst
 • them in such proportions as I should ap-
 • point in my own time; and if there should
 • be but one son of the foresaid marriage,
 • then the foresaid sum was to be restricted
 • to 50000 merks money foresaid; and if
 • there should be no son, but daughters, in
 • that case the foresaid sum of 60000 merks
 • was to be restricted to the sums following,
 • *to wit,* if there were but one daughter, to
 • the sum of 25000 merks money foresaid;
 • and if there were two daughters, to the
 • sum of 30000 merks; and if there were
 • three or more daughters, to the sum of
 • 40000 merks money above written, to be
 • divided amongst them as I should appoint.
 • Which proportions and sums above written,
 • I bound and obliged me, and my forefairs,
 • to pay to the male children to be begotten
 • of the foresaid marriage at the age of four-
 • teen years complete, and to the daughters at
 • their age of twelve years complete. And,
 • for their entertainment, breeding and edu-
 • cation.

cation yearly, after my decease, I bound
 and obliged me, my heirs and successors
 foresaid, to pay to my said children the sums
 of money following; if there be one child,
 the sum of 600 merks yearly, until the said
 child attain the age of six years, and if
 there be two children, the sum of 800
 merks yearly; and if there be three or
 more children, the sum of 1000 merks mo-
 ney foresaid yearly, and ay and while the said
 children attain to the age of six years com-
 plete, and from the age of six years until
 the male children attain the age of four-
 teen, and the daughters twelve, to make
 payment of the following sums for their
 entertainment, breeding and education, viz.
 1200 merks yearly for one child, 1600
 merks yearly for two, and 2000 merks year-
 ly for three or more, to be paid at two
 terms in the year, *Whitsunday* and *Martin-*
mas, by equal portions; and the first term's
 payment to begin at *Whitsunday* or *Martin-*
mas next, and immediately following my
 decease, for the half year preceeding, and
 so forth termly thereafter, according to the
 obligation above mentioned, till the said
 children should attain to their respective
 ages of twelve and fourteen years com-
 plete, as said is; and, after their attaining to
 the said ages, to make payment to them of
 the annual rent and profit of the said sums
 and portions yearly and termly, so long there-

' after as the same shall remain unpaid, as the
 ' foresaid contract matrimonial proports. And
 ' now, seeing it hath pleased God already to
 ' bless me with three children of the foresaid
 ' marriage, B, C, and D. whom I am now re-
 ' solved to provide and secure according to
 ' my obligations in the foresaid contract;
 ' therefore, in corroboration thereof, and with-
 ' out prejudice or derogation thereto, or to
 ' any diligence competent to follow there-
 ' upon, *sed accumulando jura juribus*, wit ye
 ' me to be bound and obliged, likeas I, by
 ' these presents, bind and oblige me, and my
 ' heirs, &c. to make payment to the said B,
 ' C, and D. &c.' (Here follows the bond in
 ' common form, according to the agreement in
 ' the contract.)

This bond was in implement of a contract
 of a second marriage, the land estate of the
 father being inherited by a son of the first
 marriage, who was heir presumptive.

Of BONDS *ad facta praeſtanda* com- pound.

FROM what hath been said concerning
 bonds simple, for performance of deeds
 simple, and from the knowledge of the na-
 ture of a compound writ, you may know how
 bonds *ad facta praeſtanda* compound are for-
 med; yet we shall, for farther illustration,

give

ive you a few examples of this kind, in
 some remarkable cases, very fit to be known.
 As,

1mo, An obligation to cause a person ab-
 sent sign a bond. ' Be it known to all men,
 by these presents, me *A. whereas B.* has
 presently lent to me the sum of——*Scots*
 money, for which sum there is a bond grant-
 ed to her by me, bearing annual rent from
 this day, and liquidate expences: *And seeing*
 that——are also to sign the same bond, and
 therein become bound with me, but are not
 now in town to subscribe the same, *there-*
fore, I bind and oblige me, my heirs and ex-
 ecutors, betwixt and the——day of——in-
 stant, to deliver to the said *B.* her heirs or
 assignies, a bond for the sums above mention-
 ed, duly subscribed by me and the said——
 before famous witnesses, and to be *verbatim*
 of the tenor of the bond now delivered for
 the said sum, which is only subscribed by
 myself; and it is to be given back to me
 upon the delivery of the bond subscribed
 by us all, and that under the penalty of——
 money foresaid, by and attour performing of
 the premises.'

Otherways thus:

' Be it known, &c. me *A. whereas I have*
 instantly received from *B.* the sum of 1000
 merks *Scots* money, which I have borrowed
 from him for the use and behoof of *C.* but
 seeing the said *C.* is not in this place to sub-
 scribe

' scribe a bond for the same, and that the said
 ' B. is content to accept of my obligation
 ' underwritten; *therefore*, I bind and oblige
 ' me, my heirs, successors and executors,
 ' to deliver to the said B. a common move-
 ' able bond, duly subscribed by the said C.
 ' for payment making to him, his heirs or
 ' assignies, of the foresaid principal sum, at
 ' the feast and term of——with the ordi-
 ' nary annualrent thereof, from——during
 ' the not-payment of the same, *with* 100 l.
 ' money foresaid of liquidate expences, and
 ' that betwixt and the——day of——next
 ' to come, he always, upon my delivering to
 ' him the said bond, being obliged to give up
 ' to me this my obligation; *or otherways* to
 ' make payment myself of the said principal
 ' sum and annualrents, upon the said——
 ' day of——and that under the penalty
 ' of——money foresaid, in case of failzie,
 ' by and attour performance of the premis-
 ' ses.'

2do, A bond of presentation, whereof there
 may be two kinds; as, *first*, for compearance
 before a judge and *judicio fisti*, the stile of
 which is given before. The *second* sort is an
 obligation to present a debtor to the prison,
 or otherways to pay the debt. The stile
 whereof is thus.

A BOND

A BOND of PRESENTATION.

BE it known, &c. me *A. Forasmuch as B.*
 by his bond, &c. (*Here narrate the*
bond) *Whereupon* the said *C.* raised letters of
 horning, and by virtue thereof caused charge
 the said *B.* to make payment to him of the
 sums of money, principal, annualrents, and
 penalty above written; *and also* purcha-
 sed letters of caption, and by virtue there-
 of caused apprehend his person: *And now,*
seeing that at my earnest desire the said *C.*
 is not to put the foresaid diligence to farther
 execution, but is willing to permit the said
B. to go about his lawful affairs in freedom,
 till the time after specified, upon my grant-
 ing the bond underwritten: *Therefore,* wit-
 ye me to be bound and obliged, *likeas, I,*
 &c. to present the person of the said *B.* to
 the said *C.* or to any having his commission,
 at *Edinburgh,* in the house of———upon
 the 15th day of *September* next to come, be-
 twixt the hours of ten and eleven in the
 forenoon, without longer delay, fraud or
 guile, then and there to be personally ap-
 prehended and disposed upon at the will and
 pleasure of the said *C.* or any having his war-
 rant and commission, conform to the said
 letters of caption in all points, and that in
 as good condition as he presently is, without
 any

‘ any suspension, protection, *cessio bonorum*,
 ‘ or other ground and warrant whatsoever
 ‘ that may stop, let, hinder, or impede the
 ‘ said *C.* his apprehending the person of the
 ‘ the said *B.* incarcerating of him, or putting
 ‘ the said letters of caption to their full and
 ‘ final execution in all points, and that under
 ‘ the penalty of———*Scots* money in case of
 ‘ failzie, by and attour performance of the
 ‘ premisses.’ Registratfon.

In bonds of presentation it is most expedient to make provision against all unforeseen accidents that may impede and hinder the prisoner to be presented, such as sickness, and in that case the clause may be thus:
 ‘ Likeas it is hereby specially provided and
 ‘ declared, That, in case the said *B.* shall hap-
 ‘ pen to be so indisposed by sickness, that he
 ‘ cannot go to the foresaid place at the said
 ‘ time, without danger to his health, then
 ‘ and in that case, it shall be a sufficient exo-
 ‘ neration to me, to take the said messenger
 ‘ or any other the said *C.* shall appoint, to the
 ‘ house where the said *B.* shall be lodging for
 ‘ the time, and there present him to the said
 ‘ messenger, the house being always within
 ‘ the town of *Edinburgh*.’

The alternative of the bond may be thus:
 ‘ Or otherways at the said time and place, to
 ‘ make due and thankful payment to the said
 ‘ *C.* and his foresaids, of the whole sums of
 ‘ money, principal, annualrents, and expen-

ces contained in the bond and diligence above mentioned, and due by virtue thereof, and that under the penalty of———&c.?

I have seen a bond of presentation subjoined to a bond of corroboration, thus;———

And, in case punctual payment shall not be made of the said 1000 merks, in that case I *A.* do hereby bind and oblige me, &c. to present the person of the said *B.* prisoner within the tolbooth of *Edinburgh*, from which he is now liberate with consent of the said———there to remain prisoner, at his instance, ay and while he fulfil to him the command of the letters of horning whereupon the caption is founded, and that without any suspension, protection, or any other warrant for sisting execution, or interrupting the diligence at his instance against him; and if I shall fail in not presenting him to the said tolbooth, in manner foresaid, upon or before the 15th of *September* next, then, and in these cases, or either of them, I the said *A.* bind and oblige me, and my forefairs, to make payment to the said———, or to his above specified, of the said sum of 1000 merks, betwixt and the 20th of *September* next to come, with the sum of 100 *l.* money foresaid of liquidate expences in case of failzie, and annualrents of the said principal sum, so long as the same shall remain unpaid after the time foresaid.' In this case the bond of corroboration was granted
by

by one, and the bond of presentation by another.

III. A bond of relief. ' Be it known, &c.
 ' me *A. Forasmuch* *B. and C.* have, by a
 ' bond of the date, engaged themselves as
 ' conjunct with me, for payment to-----of the
 ' sum of 6000 pounds at the term of-----
 ' in the year-----with 600 pounds money
 ' foresaid of liquidate expences in case of
 ' failzie, and annualrents from *Martinmas* in
 ' the year-----during the not-payment, as
 ' the said bond more fully bears: *And seeing*
 ' the said *B. and C.* became only obliged
 ' therein at my desire, the foresaid whole
 ' sum of 6000 pounds being received by me,
 ' and applied to my own proper use, so that
 ' in all equity and reason they ought to be
 ' relieved thereof, and secured from any pre-
 ' judice they may sustain thereby; *therefore,*
 ' wit ye me to be bound and obliged, *like-*
 ' *as, &c.* me, my heirs, successors, and ex-
 ' ecutors, &c. to warrant, free, relieve, and
 ' skaithless keep the said *B. and C.* their heirs
 ' and executors, of the bond above mention-
 ' ed, and of the whole sums of money, prin-
 ' cipal, annualrents, and expences above spe-
 ' cified, contained therein, and of all cost,
 ' skaith, damage, expences and interest that
 ' they, or either of them, or their forefairs,
 ' shall happen to sustain or incur therethrough
 ' in any sort; and for that effect, at *Whit-*
 ' *sunday* next, to make payment to the said
 ' -----ob

— of the foresaid principal sum, with what annualrents thereof shall be resting for the time, and to retire from him the bond above mentioned, and to deliver to them, and each of them, their subscriptions therefrom, or otherways a sufficient discharge thereof, and that under the pain and penalty of 600 pounds *Scots* money to be paid by me to them in case of failzie, by and attour fulfilling of the premisses.' Registration.

A bond of relief to a cautioner in a suspension. ' Be it known, &c. me *A. Forasmuch* I was lately charged by virtue of letters of horning purchased against me at instance of *B.* to make payment to him of the sum of ——— (*as in the charge*) And *seeing*, at my earnest request and desire, *C.* is become cautioner for me in the suspension thereof, and that equity and reason require that he and his should be freed, relieved, and skaithless kept therein, and of all danger that may follow to them thereby; *therefore* wit ye me to be bound and obliged, *likeas*, &c. shall happen to sustain and incur therethrough in any sort.' Registration.

Another bond of relief in a singular case.

‘ Be it known, &c. me *A. Forasmuchas,*
‘ &c. (*Here narrate the principal bond*) And
L ‘ *seeing*

' seeing the said *B.* is become bound, and has
 ' engaged himself in the foresaid debt, upon
 ' consideration that he is resting to me the
 ' sum of — and that it is intended that what
 ' he shall pay thereof shall be allowed to him
 ' of the foresaid debt, and that he shall be
 ' discharged thereof *pro tanto*; therefore wit
 ' ye me to be bound and obliged, *likeas, &c.*
 ' me, my heirs, successors and executors, in
 ' case the said *B.* shall make payment of the
 ' foresaid sum, to deduce, allow, and discharge
 ' as much of the first and readiest of the mo-
 ' ney due by him to me; and which discharge
 ' shall contain absolute warrandice, and all
 ' other necessary clauses; and in case the said
 ' *B.* shall not at that time be debtor to me,
 ' then, and in that case, I bind and oblige
 ' me, &c. to free, relieve, &c. (*in common*
 ' *form, as above*) And, for his farther secu-
 ' rity thereanent, if he shall not be debtor to
 ' me, as said is, I do hereby consent that he
 ' take assignation to the debt wherein he stands
 ' bound for me, and to the sums of money
 ' contained therein, and to the securities grant-
 ' ed for the same upon my estate, or other-
 ' ways, and that he use such diligence as
 ' he shall think fit thereupon, ay and while
 ' he obtain relief and payment, as said is.
 Registration.

IV. A bond of warrandice, when one ha-
 ving disposed lands with warrandice only from
 proper fact and deed, and thereafter, upon
 another

another agreement, is to give warrandice absolute, the bond is thus.

‘ Be it known, &c. me *A. Forasmuchas,*
 ‘ *(Here the disposition is narrated)* And it
 ‘ *being* very just and reasonable that the said
 ‘ *B.* be secured in the lands and others above
 ‘ disposed, at least in so far as may extend to
 ‘ the sum of ——— which was truly paid by
 ‘ him to me for the granting of the rights
 ‘ and disposition above mentioned; *therefore,*
 ‘ in corroboration of the clause of warrandice
 ‘ contained in the foresaid disposition, and
 ‘ without prejudice or derogation thereto, or
 ‘ to any diligence competent to follow there-
 ‘ upon, *sed accumulando jura juribus,* wit ye
 ‘ me to be bound and obliged, *likeas, &c.* to
 ‘ warrant, acquit, and defend the lands and
 ‘ others above rehearsed, contained in the
 ‘ foresaid disposition granted by me to the said
 ‘ *B.* to be free, safe, and sure, &c. *(As in*
 ‘ *the clause of absolute warrandice of a dispo-*
 ‘ *sition, to be declared in that part which treats*
 ‘ *of dispositions)* in time coming, excepting and
 ‘ reserving always from this present warran-
 ‘ dice the foresaid gift of ward and non-entry,
 ‘ which is assigned by me to the said *B.* and
 ‘ also excepting all bygone publick burdens,
 ‘ from which I shall not be obliged to warrant
 ‘ the said lands, and also excepting the right
 ‘ and wadset or infeftment of the lands and
 ‘ others above rehearsed, granted to *D.* And
 ‘ farther, with this declaration, That if the
 L 2 ‘ lands,

‘ lands, and others aforefaid, fhall happen to
 ‘ be evicted from the faid *B.* in that cafe all
 ‘ action and recourfe at his inftance againft
 ‘ me, upon the clause of warrandice contain-
 ‘ ed herein, fhall be, and hereby is refticted
 ‘ to the faid fum of ——— paid by him to me
 ‘ for granting thereof, with the annualrent of
 ‘ the faid fum, from and after the eviction,
 ‘ during the not-payment thereof, or till the
 ‘ faid *B.* and his forefaids be re-entered to the
 ‘ poffeffion thereof, the faid *B.* and his fore-
 ‘ faids, making intimation to me, and my fore-
 ‘ faids, of any action that fhall be intended for
 ‘ eviction of the faid lands, or any annual-
 ‘ rent or yearly duty forth thereof, and that
 ‘ before *litifcontestation.*’

V. A bond of relief and warrandice to a
 perfon who was owing money to another who
 was debtor to the granter of this bond, and
 who had made payment of the fums upon a
 decreet of forthcoming obtained againft him,
 the fums being not only arrefted by others,
 but alfo affigned by the creditor : And it be-
 ing agreed that the receiver of the money
 fhould warrant the payment, the bond is in
 this form : ‘ Be it known, &c. me *A. Foraf-*
 ‘ *muchas B.* did arreft certain fums of money
 ‘ in the hands of *C.* alledged due by him to
 ‘ *D.* to have remained under arreftment till
 ‘ the debt mentioned in the copy, alledged
 ‘ due by the faid *D.* to the faid *B.* fhould be
 ‘ paid;

paid; as also the said *D.* did assign to *F.* certain sums of money which *D.* pretended to be due to him by the said *C.* and which assignation was intimate to him: *Likeas* I have lately recovered decreet against the said *C.* for payment of certain parts and portions, therein mentioned, of the principal sum of 20000 pounds, and annualrents thereof, contained in a bond granted by the said *C.* to *E.* dated ———— *And seeing* the said *C.* at his payment to me of the sums whereunto I was preferred by the fore-
said decreet, desired not only a discharge with absolute warrandice, which accordingly I have granted upon the day and date of these presents, but also to be secured from the foresaid arrestment and assignation; *therefore* wit ye me, as principal, and *G.* as cautioner, to be bound and obliged, *likeas, &c.* to warrant, relieve, and skaithless keep the said *C.* his heirs and executors, from all trouble and action that shall happen to be moved and intented against him upon the foresaid arrestment or assignation, and from all cost, skaith, damage, expences and interest that he or his foresaids shall happen to sustain and incur therethrough, or in defending against the same, and to refund to him any expences he or his foresaids shall sustain thereanent.' Follows a bond of relief to the cautioner. Registration.

The clause of relief subjoined to bonds is to be found in *page 53.*

1. When in the principal bond there is a clause of relief, the bond of relief, which is to be granted apart, ought to be conceived in corroboration of that clause, and is thus expressed: ‘ Therefore, in corroboration of the
‘ forefaid clause of relief contained in the
‘ forefaid bond, and without prejudice or derogation thereto, or to any diligence competent to follow thereupon, *fed accumulando, &c.* wit ye me to be bound and obliged, *likeas, &c.*’

2. In bonds of relief, wherein, for farther security, there is an assignation of any thing, or an obligation to dispoſe lands for the cautioner’s relief, this clause and provision is moſt commonly adjoined, *viz.* ‘ That ſo
‘ ſoon as the ſaid *B. (cautioner)* ſhall be fully
‘ relieved and freed of the forefaid cautionry,
‘ and that I ſhall deliver to him a valid diſcharge thereof, then, and immediately thereafter, not only this assignation, but alſo the
‘ forefaid infeſtment of relief, which I am
‘ hereby obliged to grant, ſhall be null and
‘ void, as if it had not been made.’

3. One having bought lands, which were burdened with wadſets, gives to the diſpoſer a bond to relieve him of theſe wadſets, and to pay the ſums due thereby. The order and form of which bond is, to narrate the diſpoſition, and then to ſubſume,

That

That albeit the said B. has granted to me
 a full discharge of the sum of 80000 pounds,
 as the value, worth, and price of the said
 lands; yet, nevertheless, true it is and of
 verity, that the said price is to be employ-
 ed and applied in manner following, viz.
 the sum of ——— thereof is to be applied
 for purging of the wadsets and other he-
 ritable securities after mentioned, affecting
 the said lands, viz. 4600 merks thereof to
 the heirs and successors of ——— for
 purging of a wadset he had upon the lands
 of ——— (And so forth with
 the rest of the wadsets) therefore, he bound
 him, &c. to warrant and relieve the said B.
 of all skaith that he or his foresaids shall hap-
 pen to sustain therethrough; and for that
 effect, to make payment to the said persons
 of the respective sums above specified, each
 of them for their own parts, as is above di-
 vided, and to retire from them sufficient dis-
 charges and exonerations to the said B. of
 the same sums, as to all personal execution
 that may be used against him or his foresaids
 thereupon, and as to all real execution that
 may be used against any estate, heritable or
 moveable, belonging, or that shall happen to
 belong to him or his foresaids, without pre-
 judice nevertheless to me to take assignations
 and dispositions to the said sums, and to re-
 tain the wadset due to myself, in so far as I
 may be thereby secured in the lands and o-
 thers

"thers foresaid, particularly disposed by the
 "said B. to me, and to the lands disposed in
 "warrantice in case of eviction of the prin-
 "cipal lands: And it is hereby declared, that
 "it shall be leisom and lawful to me to make
 "use of the process raised at the instance of
 "the said — — against the wadsetters, for
 "causing them compt and reckon as to the su-
 "perplus of the rents and duties of the re-
 "spective lands wadset to them, more than
 "pays the interest of their principal sums, as
 "I bind and oblige me to relieve the said B.
 "and his forebids, of the annualrents of all
 "the said principal sums, in so far as he may
 "be liable to the wadsetters and others for
 "the same, from and after the term of *Whit-*
 "*sunday* in this instant year, and in all time
 "coming." To this was subjoined an oblige-
 "ment to pay the remainder of the price, with
 the annualrent, *in forma communi*.

The clause above mentioned, declaring it
 lawful to redeem the wadsets, is not a suffi-
 cient title for him to pursue for redemption,
 but to corroborate this he got an assignation
 to the reversion of these wadsets, with a power
 to that effect (a).

5. An

(a) One having purchased an estate before the court
 of session, and being willing to give money to one of
 the creditors (who is duly ranked on the said estate)
 sooner than the term at which the price is payable, the
 creditor grants his bond to the purchaser in this or the
 like stile.

• I A.

4. An heritable bond of relief is of a different tenor from an heritable bond of borrowed money, as will appear from comparing the two. The heritable bond of relief is of the tenor following, and I make it in a case, where, in the original bond, the principal was in effect only cautioner, albeit he gave a general obligation of relief, so that now the case is reversed, all which is in this form: Be it known, &c. me *A. Forasmuch as* (*Here narrate the bond*) *And seeing* the said *B.* did
 ‘ only

‘ I *A.* grant me to have borrowed and received from
 ‘ *B.* the full sum of 12000 pounds *Scots* money, at the
 ‘ term of *Candlemas* last, wherewith I hold me well
 ‘ content, renouncing all exceptions to the contrary;
 ‘ which sum of 12000 pounds *Scots*, I bind and oblige
 ‘ me, and my heirs and successors whatsoever, to pay
 ‘ back again to the said *B.* his heirs and assignies, se-
 ‘ cluding executors, on or before the term of *Whit-*
 ‘ *sunday* next, with a fifth part more of liquidate ex-
 ‘ pences in case of failzie, and the legal interest for the
 ‘ said principal sum, from the said term of *Candlemas*
 ‘ last, to the said term of payment, and thereafter du-
 ‘ ring the not-payment of the same. And, in farther
 ‘ security, I bind and oblige me and my foresaids, to
 ‘ assign and transfer, as I, *per verba de presenti*, do as-
 ‘ sign and transfer, to and in favour of the said *B.*
 ‘ and his foresaids, as much of the debt due to me by
 ‘ *C.* and for which I am ranked as creditor on his
 ‘ lands and estate, (purchased by the said *B.*) as will
 ‘ completely satisfy and pay him and his foresaids the
 ‘ said principal sum and growing interest.’ Registrati-
 on, &c.

And when the creditor assigns and discharges his debt, in favour of the purchaser, he gets back this bond.

* only become principal in the said bond at
 * my desire, and that the foresaid whole sum
 * of ten thousand merks was received by me,
 * and applied to my own proper use, not-
 * withstanding of the clause of relief con-
 * tained in the said bond, wherethrough, in all
 * equity and reason, the said *B.* ought to
 * be secured from all damage and prejudice
 * that he may sustain thereby; *therefore, with*
 * * *ye me*, not only to have exonerated and dis-
 * charged, *likeas* I, by these presents, exoner-
 * and simply discharge the said *B.* and his heirs
 * and executors, of the clause of relief grant-
 * ed by him to me, contained in the end of
 * the foresaid bond, made by him as princi-
 * pal, and me as cautioner, to the said *C.* and
 * of all action and execution competent, or
 * that may be competent to me against him
 * by virtue thereof; *but also*, to be bound and
 * obliged, *likeas* I, by these presents, bind and
 * oblige me, my heirs, &c. to warrant, &c.
 * the said *B.* his heirs and executors, of the
 * bond above mentioned, and sums of mo-
 * ney, principal, annualrent, and expences
 * above specified, therein contained, and of
 * all cost, skaith, damage, expences and inter-
 * rest, that he or his forefaids shall happen to
 * sustain or incur therethrough in any sort
 * *and farther*, to be bound and obliged, *like*
 * *as* I, for the said *B.* his farther relief, and
 * better security thereanent, by these presents
 * bind and oblige me, my heirs and successors

* upon

upon my own proper charges and expences,
 and by my own moyen, to duly and law-
 fully infeft and feize, with all convenient
 diligence, the faid *B.* his heirs and assignies
 foresaid, heritably, under the provisions
 and conditions after mentioned, in all and
 whole the lands and barony of ————
 with the tower, fortalice, manor-place, hou-
 ses, biggings, yards, orchards, parts, pendicles,
 and pertinents thereof, as the same are de-
 signed and denominated in my infeftments
 thereof, lying within the sheriffdom of
 ———— and that in special clause of
 warrandice, security and relief to the faid
B. and his foresaids, of the fums above
 mentioned, contained in the bond above
 written, granted by him and me to the faid
C. So that if it shall happen him or his
 foresaids to be distressed for the same, or
 any part thereof, then, and immediately
 thereafter, they shall have full and free in-
 gress, regress, and access to the lands, ba-
 rony and others above mentioned, with the
 pertinents, setting and raising thereof, in-
 putting, or outputting of the tenants, and
 uplifting the mails and duties of the same,
 at least of so much thereof as shall be cor-
 respondent to the said distress, when it shall
 happen, and to the expence and damage that
 shall happen to be sustained thereby, to be,
 from that time forth, peaceably possessed by
 him and his foresaids, ay and while they be
 sufficiently

sufficiently freed and relieved of the said
 debt, and that by two several infeftments in
 due and competent form, the one thereof to
 be holden of me and my heirs and successors,
 either blench or feu, for payment of such
 blench and feu-duties as best shall subsist
 with the laws of this realm; and the other
 of the foresaid infeftments to be holden
 from me, and my foresaids, of my immedi-
 ate lawful superiors of the lands, barony,
 and others above written, siklike, and as free-
 ly, in all respects, as I presently hold the
 same myself, and that either by resignation
 or confirmation, as best shall please the said
 B. and his foresaids. *And siklike*, I bind and
 oblige me, and my foresaids, not only to pro-
 cure and obtain the superior's consent to
 the receiving the said resignation, or grant-
 ing the said confirmation, but also to pass the
 infeftment thereupon, and to expend all o-
 ther incident charges for perfecting there-
 of. *And* for expeding the said infeftment
 by resignation, I, by these presents, make
 and constitute, &c. in the hands, &c. in
 favour, &c. in due and competent form.
Providing always, *likeas* it is hereby expres-
 ly provided and declared, and appointed
 to be contained in the infeftment to follow
 hereupon, that the said B. his entry to the
 lands and barony above mentioned, and the
 uplifting the mails and duties thereof, by
 virtue of this present bond, and the in-
 feftment

' festment to follow hereupon, shall stand
 ' suspended, until such time as he or they
 ' be distressed for the debt above mentioned,
 ' due to the said C. or any part thereof, to
 ' be bruiked and joyed by him, and his fore-
 ' saids, from thenceforth, effeiring and an-
 ' swerable to the distress, and ay and whiie he
 ' be fully freed and relieved of the said bond
 ' and debt above mentioned, due to the said
 ' C. and to be paid of all damages, expen-
 ' ces, and interest, that he or they shall hap-
 ' pen to sustain or incur therethrough, and
 ' that either by me or my heirs, or by his
 ' intromission with the rents, duties, and ca-
 ' sualties of the lands, barony, and others a-
 ' bove mentioned. And that then, and im-
 ' mediately thereafter, the said B. and his
 ' foresaids, shall be holden to renounce and
 ' overgive, to and in favour of me and my
 ' foresaids, the whole lands and others above
 ' rehearsed, *omni habili modo quo de jure*, with
 ' warrandice from their own proper facts and
 ' deeds allenarly, and thereupon acts, &c.
 ' (*clause of warrandice as in a common herita-*
 ' *ble bond*). And moreover I, by these presents,
 ' desire and require you, &c. (*precept of sa-*
 ' *sine in the lands in common form*) conform to
 ' these presents, and infestments to follow
 ' hereupon, or either of them, under the pro-
 ' visions and conditions always above mention-
 ' ed, which are holden as here repeated and
 M ' expressed,

‘ expressed, and that this on noways ye leave
 ‘ undone. The which to do, &c.’

Of BACKBONDS.

A Backbond is an obligation by one who ac-
 quires a right or obligation, and it is
 given to the person who grants the said right,
 and which backbond is relative to the subject
 contained in the original bond or right, so cal-
 led, as it were a bond given back again; for
 example, when one gets an assignation in trust,
 it is fit the same be acknowledged, and the
 trustee or assigny be bound to make faithful
 compt. The which bond is thus; ‘ Be it
 ‘ known, &c. me *A. Forasmuchas*, albeit *B.*
 ‘ by his assignation, of the date — hath
 ‘ assigned to me, &c. (*Here narrate the assign-*
 ‘ *nation to the bond, and in the body of the as-*
 ‘ *signation make mention of the bond in the*
 ‘ *neatest form, then say,*) Yet nevertheless I,
 ‘ by these presents, declare that my name is
 ‘ insert in the foresaid assignation in trust, and
 ‘ for the behoof of the said *B.* himself, to
 ‘ the effect that diligence may be done in my
 ‘ name for obtaining payment of the sums
 ‘ thereby assigned: *And therefore* I bind and
 ‘ oblige me, my heirs, successors and execu-
 ‘ tors, to denude myself of the said debts,
 ‘ and grounds thereof, in favour of the said
 ‘ *B.* his heirs and donatars, secluding his ex-
 ‘ ecutors;

'ecutors; *likeas* I, by these presents, repone,
 'restore, and retrocess him and his foresaids
 'to his own full right and place of the pre-
 'misses, and I assign, transfer and dispo-
 'ne to him and them, all decreets and other dili-
 'gence that shall be done thereupon in my
 'name, and I shall reiterate and renew this
 'present retrocession and translation whensoe-
 'ver I shall be desired, providing I be no far-
 'ther bound therein, but with warrandice
 'from my own proper fact and deed allenarly,
 'and that the writs to be granted thereanent
 'be formed and expedie upon the proper char-
 'ges and expences of the said *B.* and his
 'foresaids; and if I shall recover payment of
 'any part of the sums above mentioned, as-
 'signed by the said *B.* to me, in that case I
 'bind and oblige me, and my foresaids, to make
 'compt, reckoning and payment to him and
 'his foresaids thereof, deducing only such ex-
 'pences as I shall deburse in the said matter.'

Another form of a backbond, by one in
 whose favour an assignation is granted in trust
 for doing diligence. 'Be it known, &c. me
 'A. Forasmuchas, (*Here narrate the bond of*
 'borrowed money, and the assignation there-
 'of) And seeing I am only intrusted by the
 'said *B.* with the assignation above mention-
 'ed, to the effect I may obtain an adjudicati-
 'on at my instance against *D.* his heirs, &c.
 'of the lands and estate which pertained to
 '—— his father, as well for the sums

‘ of money above written, assigned to me, as
 ‘ for other sums resting by the said ——— to
 ‘ me, and his creditors, from whom I have
 ‘ right; *therefore* wit ye me to be bound and
 ‘ obliged, *likeas*, &c. me, my heirs, succeſ-
 ‘ ſors, and executors, to uſe all legal diligence
 ‘ for obtaining a decreet of adjudication of
 ‘ the ſaid ——— his lands and eſtate, for
 ‘ the ſums, annualrents, and the other debts
 ‘ reſting by him, whereunto I have right,
 ‘ and upon the aforeſaid adjudication to uſe
 ‘ all diligence for procuring me to be infeſt
 ‘ and ſeized in the ſaid ——— his lands and
 ‘ eſtate; *likeas* I now, as if I were infeſt and
 ‘ ſeized therein, and then as now, bind and
 ‘ oblige me, and my foreſaids, to make juſt
 ‘ compt, reckoning and payment to the ſaid
 ‘ B. his heirs or aſſignies, ſecluding his exe-
 ‘ cutors, of a proportional part eſſeiring to his
 ‘ debt, of the mails, profits and duties of the
 ‘ lands, heritage, and others to be apprized
 ‘ at my inſtance, as ſaid is, which ſhall be in-
 ‘ tromitted with by me, or any others by my
 ‘ warrant by virtue of the foreſaid adjudica-
 ‘ tion. And, ſicklike, to denude me of the
 ‘ foreſaid adjudication, and whole grounds and
 ‘ warrants thereof, infeſtments to follow there-
 ‘ upon, and ſums of money to be contained
 ‘ therein, with all that may follow upon the
 ‘ ſame, to and in favour of the ſaid B. and
 ‘ his foreſaids, lawfully and effectually, *omnia*
 ‘ *habili modo quo de jure*, in ſo far as the ſame
 ‘ extends

extends, or may be extended to the sums of
 money above rehearsed, assigned by him to
 me, as said is, and to a proportional part of
 the expences that shall be debursed in the
 said matter, and annualrent thereof from the
 time of the debursement of the same du-
 ring the not-payment thereof, with power
 to the said *B.* and his foresaids, to ask, crave,
 receive, intromit with, and uplift his pro-
 portional part of the rents, profits and du-
 ties of the lands and others to be adjudged,
 as said is, and generally to do all other things
 thereanent, sicklike, and as freely in all re-
 spects, as I may then do myself. It is al-
 ways hereby provided and declared, that the
 writs to be made concerning the premisses
 shall be formed, past and expedite upon the
 proper charges and expences of the said *B.*
 and his foresaids; and that I, nor my fore-
 saids, shall not be obliged, in warrandice
 thereof, farther than from our own proper
 facts and deeds allenarly: *As also* I bind and
 oblige me, and my foresaids, to exhibit and
 produce, before any judge competent within
 this kingdom, the foresaid decret of adju-
 dication, with the whole titles thereof, and
 the infestments and sasines to follow there-
 upon in my name, to the effect so many
 thereof as shall be needful may be transu-
 med, and the authentick transumpt or dou-
 bles of the same delivered to the said *B.* or
 his foresaids, upon his own proper charges

and expences, to be kept and used by them
 at their pleasure, and to make the principal
 writs, so to be transumed, forthcoming to
 the said *B.* or his foresaids, whenever he
 or they shall have to do therewith, in all
 actions and causes wherein the said trans-
 sumpts will not be sufficient. It is likewise
 hereby provided, that if the said *B.* shall
 fail in contributing or paying to me, or my
 foresaids, of the proportional part of the
 expences to be debursed in prosecution of
 the premisses, whenever I shall demand the
 same, then, and in that case, I shall not be
 holden to fulfil this present backbond to the
 said *B.* and his foresaids, until he or they
 make payment to me, or my foresaids, of the
 proportional part of the said charges and ex-
 pences, conform to an accompt thereof.
 Registration.

Next, when a factor is constituted, he is in
 some sort a trustee; and tho' a factory of its
 own nature doth import in law an obligation
 to make faithful compt, reckoning and pay-
 ment, yet, seeing the same cannot be com-
 passed but by an action, which requires ex-
 trinsic probatation, and upon that account an
 unjust factor may prejudice, by a shifting de-
 fence, his constituent, to avoid this incon-
 venience a backbond relative to the factory
 is delivered, which may be formed in this or
 the like stile: 'Be it known, &c. (*Here nar-*
rate the factory). And it being just and rea-
 sonable

'forable that the said *B.* be sufficiently secu-
 'red that I shall make a full compt to him
 'of my intromissions with his money, which
 'I am impowered by the said factory to up-
 'lift, and that I shall do diligence for reco-
 'vering thereof in manner after mentioned;
 'therefore, wit ye me to be bound and obliged,
 'likeas, &c. that I shall make just compt, rec-
 'koning, and payment to the said *B.* his
 'heirs, executors, or assignies, of the whole
 'sums of money, principal, annualrents and
 'penalty, contained in a particular inventory
 'thereof subscribed by him and me, at least
 'to use all legal diligence for recovering pay-
 'ment thereof, and that under the penalty of
 '—— Scots money, to be paid by me to him,
 'in case of failzie, by and attour performance
 'of the premisses, deducing always and allow-
 'ing to me the sum of —— Scots of fee
 'for my being factor, and any necessary ex-
 'pences I shall be at in receiving and uplifting
 'the foresaid sums, and in doing diligence
 'therefore.'

Bonds of this sort are in use to have a cau-
 tioner, which is mentioned thus: — 'There-
 'fore, wit ye me as principal, and *C.* as cauti-
 'oner and soverty for and with me, to be
 'bound, &c.'

What is said of factors concerns likewise
 chamberlains, whose backbond to their ma-
 'ster is thus: Be it known, &c, me *A.* cham-
 'berlain to *B.* Forasmuch as the said *B.* by a
 'letter

' letter of factory and chamberlainry of the
 ' date of these presents, has made and consti-
 ' tuted me his factor and chamberlain, for up-
 ' lifting and intromitting with his rents of
 ' his lands and baronies of ———— for the
 ' crop and year of GOD 1764, as in the
 ' said letter of factory and chamberlainry at
 ' more length is expressed; and it being rea-
 ' sonable that he be secured concerning my
 ' being comptable for the year's rent above
 ' written; *therefore*, in corroboration of the
 ' provision specified in the end of the said
 ' factory, and without prejudice and dero-
 ' gation thereto in any sort, *sed accumulando*
 ' *jura jurebus*, wit ye me to be bound and ob-
 ' liged, *likeas*, &c. to make just compt, reckon-
 ' ing and payment to the said B. his heirs or
 ' assignies, of my whole intromissions with
 ' the rents, services and duties of his estate,
 ' and that for the foresaid crop 1764, and
 ' thereafter, if he shall continue me his cham-
 ' berlain any longer, and that yearly, termly,
 ' or oftener, as I shall be required: *As also* to
 ' use diligence for recovering the said rents,
 ' farms and duties, deducing always, and al-
 ' lowing to me the sum of 400 merks *Scots*
 ' of fee for my being factor, and any ne-
 ' cessary expences I shall be at in going and
 ' receiving the victual and money-rent, and in
 ' selling and delivering the same out again;
 ' and, in satisfaction of my trouble and ex-
 ' pences in doing thereof, allowing also to
 ' me

me that house in ———— presently possessed by myself and family, with grass for a cow and horse to be pastured with the said B. his own kine and horses in summer, and to have fodder for them in winter.' Registration.

The bond may likewise be thus: ' To compt for the whole mails, farms, kains, customs, casualties, profits and duties of the foresaid lands and barony, contained in a particular rental thereof subscribed by the master and factor, and to make this compt yearly, termly, or oftner, as the factor shall be required, and under a certain liquidate penalty by and attour performance, deducing always the feu-duties, minister and school-master's stipends, with such public burdens as are in use to be paid by the heritor, and the factor's necessary expences in uplifting the same.

There is no contract or conveyance that concerns any subject or right wherein a back-bond may not be interponed, which, from what is here set down, may easily be formed according to the paction and purposes of parties.

Of BONDS of TAILZIE.

A Bond of tailzie is one of those which fall under the class of bonds for performing of deeds, the granter in effect is both debtor, or obligant, and creditor. We are not here to treat of their efficacy and obligatory force, nor of all the clauses and provisions proper to be inserted in a tailzie, which alone would make a large treatise. At this time you shall have the form of the bond, and place pointed out where the provisions of tailzie are inserted: ‘ Be it known, &c. ‘ me *A.* heritable proprietor of the lands, baronies, and others after mentioned, for divers good causes and considerations moving ‘ me, and especially for the continuance of my ‘ estate with my own children and posterity, ‘ in the name of ——— to be bound and obliged, *likeas* I, &c. my heirs, as well male, ‘ &c. conjunctly and severally, renouncing, ‘ &c. to make due and lawful *resignation* of ‘ my lands and estate after mentioned, presently pertaining and belonging to me, or which ‘ hereafter shall pertain and be acquired by ‘ me at any time of my life, in favours of ‘ *B.* my son, and heirs male lawfully procreated of his own body; which failing, in ‘ favours of my other heirs of tailzie and provision after mentioned, under the reservation

‘ tions.

tions and provisions, qualifications and con-
 ditions always after specified; and, for that
 effect, *wit ye me* to have made, constituted
 and ordained, &c. to resign all and hail
(Here the lands were particularly named and
designed) and all and whatsoever lands, ba-
 ronies, patronages, tithes, mills, woods, fish-
 ings, annualrents, towers, fortalices, (a) dove-
 coats, and other heritage whatsoever pre-
 sently pertaining and belonging to me, for
 myself as heir, or apparent heir to any of
 my predecessors, or which I shall happen to
 acquire at any time of my life, dispensing
 with the generality, and admitting the same
 to be as valid and sufficient, as if the lands
 and others generally above mentioned were
 particularly designed and expressed, together
 with all right, &c. *in the hands, &c. in fa-*
vours, &c. (Here the heirs of tailzie are ex-
pressed, and the provisions and conditions of
the tailzie, which are according to the will
and pleasure of the party) and thereupon
 acts, &c. *And farther, wit ye me* to have
 assigned, transferred, and disposed to the said
 B. my son, and his forebears; which failing, as
 said is, under the reservations above expres-
 sed, all and whatsoever bonds, obligations,
 dispositions,

(a) By the 19th act, parl. 22. James VI. no man
 can build a dovecoat unless he have lands and teinds
 to the value of ten chalders of victual of yearly rent
 within two miles of the said dovecoat; and he can on-
 ly build one, and no more.

- dispositions, charters, precepts and instru-
- ments of sasine, procuratories, and instru-
- ments of resignation, dispositions and ad-
- judications, apprisings, tacks, affedations,
- (a) decreets of plat, prorogations, rever-

sions,

(a) *Decreets of plat.* At the reformation the ecclesiastical livings, both spirituality and temporality, were in the possession of the popish clergy, or had been seized upon by some of the nobility and gentry, whereby that part of the petitions in favour of the reformers, craving that the patrimony of the church might be employed to the support of the ministry, was not acceptable to these gentlemen: However, the queen, in *December 1561*, consulting with her privy council, and some of the nobility, concerning a competent provision for the ministry, and some of the churchmen being likewise consulted, it was ordained, by an act of the privy council, ' That if a fourth part of the fruits of the whole ecclesiastical benefices was not sufficient for to sustain the ministers, support the prince, and set forward the common affairs of the country, a third, or more should be yearly uptaken, and employed for these uses.' Several of the acts of the privy council anent this matter are to be found at large in the appendix to Mr. *Keith's* history of the affairs of *Scotland*, page 175, & *seqq.* These thirds were distributed among the ministers in this manner; first, the several kirks were planted by the superintendents appointed in every province, and, at the desire of the superintendents, the king and queen granted a commission to some of the nobility and ministers for meeting at *Edinburgh* and modifying stipends to the ministers of these kirks which were planted; which meeting was called *The plat*, and this plat met yearly in *November*, and this form continued until the restitution of bishops in the year 1606, who, by the 2d act, *parl.* 18. *James VI.* were ordained to maintain their ministers upon the thirds, according to the

fions, instruments and orders of redemption, on, declarators obtained or depending thereupon, letters and executions of inhibitions, and registration thereof, and other writs, rights, evidents, and securities whatsoever, made and granted to me, or that shall be conceived in my favour at the time of my decease, of and concerning the lands, baronies, mills, woods, fishings, and others particularly and generally above mentioned, or teinds, parsonage and vicarage thereof, or (b) the annuity of the said teinds, and all
sums

the ordinary assignations: But these thirds turned to small account, and did not answer the end for which they were at first intended. Sir George Mackenzie, in his observations on the 3d act, parl. 22. James VI. tells us, That, in his time, the decreets of the commission for planting and providing churches were called *decreets of plat* in our practice; but at this time the clergy are better, and more comfortably provided, and their decreets are better known by the name of *decreets of modification and locality*. For a farther knowledge of this matter the reader may consult the 10th act, parl. 1. and 12th, parl. 12th. James VI. and Spotswood's *Hope's min. pract.* page 101, et seqq.

(b) *Annuity*. King Charles I. at his accession to the crown, being sensible of the great addition that might have accrued to his revenue by the suppression of Popish benefices, had not his father inconsiderately given them away, made a vigorous attack upon the erections, and a general revocation of every thing that had been dismembered from the crown. This revocation made a great noise, and occasioned several conferences betwixt the King and the Lords of erection, who at last consented to the King's revocation, and agreed to give

* sums of money, principal, annualrents and
 * penalties contained in the said bonds, obli-
 * gations,

the King an annual pension out of all the teinds; and the King granted a commission to several of the nobility, gentry and clergy, to treat with those who had right to church-lands, teinds, patronages, and others falling within the compass of the revocation, concerning what should be done thereanent. This commission met at *Edinburgh*, and sat from *January* to the last of *June* 1627. in which time they made a considerable progress in the business committed to their care. This commission, amongst other things, ordained a constant annuity to be paid to the King out of all teinds, except those belonging to bishops, ministers, colleges, hospitals, and other pious uses, *viz.* Six merks of every hundred of teind payable in money, and out of every teind-boll of the best wheat 10 s. of the best bear 8 s. of oats, meal, pease, and rye 6 s. and where oats will not render above half meal 3 s. and, where the victual was of inferior goodness, his Majesty's annuity to be modified proportionally; where there is no valuation, they appointed the annuity to be uplifted according to the fifth part of the current rent; and these acts were ratified by the 15th act, *parl.* 1. *Charles* I. which see, with *Mackenzie's* observations thereon.

This annuity in favour of the king, not being annexed to the crown, was disposed, by King *Charles* I. to *James Livingston*, one of his bed-chamber, to be uplifted by him until he was paid of the sum of 10000 l. *sterling*, which right was purchased by the Earl of *Lowdown*; but it took little effect until the restoration, when the Earl of *Lowdown* got a commission from King *Charles* II. to sell every man his own annuity, and to compone for bygones, and to value teinds that the annuity might be known; and his disposition, with consent of two members of exchequer, was declared a sufficient right to the buyers; and these dispositions

were

gations, wadsets, adjudications, apprisings,
 and others foresaid, or due by virtue there-
 of, dispensing with the generality; and all
 action, instance, and execution competent,
 or that may be competent to me by virtue
 thereof, *surrogating and substituting* the said
 B, my son, and his forefairs; which fail-
 ing, as said is, under the reservations, &c.
 above rehearsed, in my full right and place
 of the premisses. *And I declare* that this
 shall be a valid evident in favour of my said
 son, and his forefairs; which failing, as said
 is, if it be not altered by me in my own
 time, albeit it be lying in my own custody,
 the time of my decease, undelivered to
 him, or to any in his name, notwithstand-
 ing of any acts, laws, practise made, or to
 be made in the contrary, wherewith I, for
 me and my heirs, by these presents, dispense;
 and

were appointed to be recorded in the books of exche-
 quer, that the sums received therefore might be known,
 and imputed to the sum for which the right to the an-
 nuity was granted. In consequence of this commission
 many bought their annuities; and the like commission
 was renewed to *James Earl of Lowdown*, son to the a-
 bove Earl, who made some progress therein, in the same
 manner as his father had done; but, in *anno 1674*. a
 stop was put thereto by the King's warrant; and with
 this stop, by a proclamation from the King, all the ar-
 rears of the annuity before the year 1660. were sim-
 ply discharged, and thus it remains at this present time.
 See *Forbes on tithes*, page 258. & *seqq.* and *Monteith*
 of *Salmonnet's hist. troubles of Great Britain*, transla-
 ted by *Ogilvy*, page 6. & *seqq.*

‘ and I bind and oblige me, and my forefaids,
 ‘ to reiterate and renew thefe presents, and
 ‘ to expedite infeftments thereupon, and to grant
 ‘ fuch particular rights and conveyances as
 ‘ fhall be requifite for a legal eftablifhment of
 ‘ a right conform to the fubftitution and pro-
 ‘ vifions herein contained.’

Bonds which oblige both for payment of money and performance of deeds, may be modelled out of a compofition of the bonds of both forts, here treated of; however, the following bond may ferve for an example.

BOND *by a Vaffal to his Superior for Payment of the Feu-Duties, and for performing of the Services contained in the Reddendo of his Charter.*

‘ **B**E it known, &c. me *A.* for myfelf, and
 ‘ taking burden upon me for *B.* my
 ‘ fpoufe — to whom, and in whose favour
 ‘ the charter after mentioned is granted, *For-*
 ‘ *asmuchas* a noble and potent Lord *C.* hath,
 ‘ by a charter of the date — granted and
 ‘ difpomed to the faid *B.* her heirs and affig-
 ‘ nies whatfoever, all and whole (*Here mention*
 ‘ *the lands verbatim as in the charter*) to be
 ‘ holden of the faid noble Lord during his
 ‘ lifetime, and after his deceafe of — his
 ‘ fon,

son, and his heirs and successors therein specified, for payment yearly of the feu-duties after mentioned, viz. (*Here mention the feu-duties, and other payments and services to which the vassal is obliged, particularly, and verbatim, as they are in the reddendo of this new charter; which, if it be general, let all the services, and others to which the vassal is liable, be taken out of the old charter, and insert expressly and distinctly herein*) And it being just and reasonable, that the said C. and his said son, be secured, to their own satisfaction, in the payment of the foresaid feu-duty, and fulfilling of the reddendo of the foresaid charter; therefore, in corroboration thereof, and without prejudice or derogation thereto, or to any diligence competent to follow thereupon, *sed accumulando jura juribus*, wit ye me, the said A. to be bound and obliged, *likeas* I, by these presents, bind and oblige me, my heirs and successors whatsoever, conjunctly and severally, to make due and thankful payment to the said C. during all the days of his life, and to the said — his son, and his heirs after his decease, of the feu-duties above mentioned, termly as they fall due, and of the said services as they shall be required, beginning the first term's payment at *Whitsunday* next to come, in the year of GOD 1764. and termly thereafter, at the terms above specified, by equal portions, in all time coming, with the sum of

' ten merks money foresaid of liquidate ex-
 ' pences for each term's failzie *toties quoties*.
 ' And also that the said B. her heirs and suc-
 ' cessors succeeding in the right of the fore-
 ' said lands, shall renew this obligation from
 ' time to time, at the entry and succession of
 ' every heir and successor, under the penalty
 ' above specified.' Registration.

Having treated of several sorts of com-
 pound bonds, which are, of their own na-
 ture, original or principal, it remains, that,
 for completing this part, which relates to writ-
 ten obligations, we treat of bonds of corro-
 boration.

Of BONDS of CORROBORATION.

A Bond of corroboration, besides the *obli-*
gatory Clause, which it has in common
 with a simple bond, has a narrative, wherein
 the original obligation, and what has follow-
 ed on it, is narrated fully. 2. *The subsump-*
tion, which is, that the creditor is content to
 supersede payment till a further term, upon
 his getting a corroborative security, in man-
 ner thereafter mentioned. It may be called
The cause of the bond, and the form of it is
 various, as shall be shewn. 3. *The inference*
 from these premisses, namely, the obligation
 itself, *Therefore wit ye me to be bound and obli-*
 ged,

ged, &c. The stile of this is uniform, as will appear from the examples of the various cases here set down. The specifick difference of the stile of a bond of corroboration, from another bond, or any other writ, consists in the subsumption and inference; for the narrative may be premised to writs of several sorts, and of different purposes, as to an assignation, or to a discharge.

Bonds of corroboration are divided into as many species as original bonds are; and, besides, may be considered in these different forms: As, I. With respect to the creditor, it is granted to the original creditor himself, or to his heir, or executor, or to his assigney. II. With respect to the debitor, it is granted by the debitor himself, his heir or executor, or successor *lucrative*, who is bound to pay this debt; and all these either by themselves alone, or with a cautioner, one, or many. And, III. With respect to the form, it is a simple corroboration, without any addition or augmentation of the former bond, or with augmentation arising on sundry accounts, as the addition of a cautioner, or a real security. 2. The accumulation of the bygone annualrents into one sum, and making them, with the former principal, to bear annualrent. 3. The advancing and lending of a new sum. And the variety in bonds of corroboration may proceed from any one or two, or from all these causes jointly,

The

The form and stile of a bond of corroboration, by the original debtor to the creditor himself, in the most simple form, is thus:

Be it known to all men, by these present letters, me *A. Forasmuch* as I, by my bond, &c. (*Here narrate the bond*). And seeing the said *B.* has condescended, at my request, to delay the payment of the said 12000 *l.* till *Whitsunday* next, upon my granting the obligation under written; *therefore*, in corroboration of the bond above mentioned, and without prejudice or derogation thereto, or to any diligence that has followed, or that may be competent to follow thereupon, *sed accumulando jura juribus*, wit ye me to be bound and obliged, *likeas* I, by these presents, bind and oblige me, my heirs, successors, executors, and intromitters with my goods and gear whatsoever, conjunctly and severally, to make due and thankful payment to the said *B.* his heirs or assignies including his executors, of the foresaid principal sum of 12000 *l.* with the whole bygone annualrents thereof, then resting at the term of payment after mentioned, and that betwixt the date hereof, and the term of *Martinmas* next to come, in the year 1764, without longer delay, with the sum of 1200 merks money foresaid of liquidate expences in case of failzie, together also with the ordinary annualrent of the said principal

sum

‘ sum, conform to the act of parliament,’ &c.
as in a simple bond.

If diligence has been done upon the original bond, it ought to be narrated, and the corroborative clause ought to be in this or the like form; ‘ *Therefore*, in corroboration of ‘ the foresaid registred bond, and letters of ‘ horning raised thereupon, and gift of es- ‘ cheat above mentioned, and without preju- ‘ dice or derogation thereto, &c.’ If there be annualrents due, which, at granting the corroboration, are not paid, the subsumption and obligation is thus; ‘ And seeing the said ‘ *B.* is content, at my earnest desire, and upon ‘ granting the corroboration under written, ‘ to supersede the payment of the said prin- ‘ cipal sum, and annualrents thereof resting ‘ unpaid, till the time of payment after men- ‘ tioned; *therefore*, ——— to pay ——— the ‘ foresaid principal sum of ——— and the ‘ whole bygone annualrents thereof, resting ‘ unpaid since the term of ——— and that ‘ betwixt the date ——— with annualrent for ‘ the said principal sum since the term of ——— ‘ and in time coming, &c.’

But, if the bygone annualrents are to be accumulated, and added to the principal, the cause of granting the bond is in this or the like stile; ‘ And now seeing that the foresaid ‘ principal sum is yet resting, with the an- ‘ nualrent thereof above specified of the fore- ‘ said bond; which principal sum, with the
‘ annualrent

' annualrent thereof to the term of ———
 ' last bypast, being all compted together, ex-
 ' tends in whole to the sum of ——— money
 ' above written; and that equity and reason
 ' requiring that the said B. should be farther
 ' secured for the said sums; *therefore, &c.*
 And the obligation bears ' to pay the whole
 ' accumulated sum, with the annualrents there-
 ' of.'

In all bonds of corroboration it is usual
 and necessary, to the obligation to pay an-
 nualrent after the term of payment, to sub-
 join this clause; ' Without prejudice of suit-
 ' ing execution hereupon, or upon the said
 ' other bond, or both, without requisition.'
 And if there be any other writ or security,
 besides the original bond, prior to this corro-
 boration, let it be *without prejudice to it like*
ways. If diligence has been used on any of
 the antecedent securities, the clause is thus;
 ' Without prejudice, &c. or to prosecute the
 ' diligence already done, or to use all or any
 ' of the said ways of execution till he obtain
 ' payment, and that without requisition.'

If the bond of corroboration be granted to
 the heir or executor of the original creditor,
 after the first bond is narrated you make
 mention of the service, or of the confirmed
 testament; and if a decret has followed on
 these, you narrate the decret also; and, in
 the subsumption and obligation, mention the
 name of the heir or executor simply, as if

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he had been the original creditor, where-
through it will not differ in the stile from that
of the bond above set down.

If the corroboration be to an assigney,
then the assignation is narrated, ~~and~~ the cause
of granting the bond of corroboration and
obligement uses to be thus: ‘ And seeing
‘ the said *B.* did accept of the foresaid assigna-
‘ tion to these two bonds at our desire, and up-
‘ on our promise of granting to him the cor-
‘ roboracion after specified; *therefore, &c.* Or
‘ in this manner, And seeing the said *B.*
‘ did, at our earnest desire, make payment
‘ of the whole principal sums contained in
‘ the three bonds above mentioned, granted
‘ to the said *D.* extending to 5000 *l.* of prin-
‘ cipal sums, and did take assignations there-
‘ to; *as also,* he condescended, at our request,
‘ to supersede and continue the same till the
‘ term of payment after mentioned, where-
‘ through, in all equity and reason, he ought
‘ to be secured thereanent; *therefore,* and in
‘ corroboration of the three bonds above spe-
‘ cified, granted to the said *D.* with the as-
‘ signation made to the said *B.* thereof, and
‘ without prejudice or derogation thereto,
‘ &c.

When bonds granted by defunct persons
are corroborated by persons made liable in
law to pay the debt, as by the heir or ex-
ecutor, their relation to the principal debi-
tor

tor should be insinuated in the corroboration, and this is commonly done by an additional designation, from which one will easily conceive the reason why that person grants the corroboration; as, when a bond is corroborated by an executor, the additional designation is thus: — ‘ Me *A.* executor nominated ‘ and confirmed to the deceast *B.*’ After which the bond is narrated, and the stile of the corroboration goes on in common form. The same may be said of an heir served and retoured.

It sometimes happens that the bond of corroboration is granted by one who had no relation to the original debtor, wherefore, in the subsumption, the cause or reason of granting is expressed in this or the like manner: ‘ And seeing the said *D.* did advance the fore- ‘ said principal sum to the said *B.* upon the ‘ foresaid security, and upon my promise to ‘ give and grant my bond of corroboration af- ‘ ter specified; *therefore, &c.*’

When more money is lent by the creditor in the original bond to the debtor or his heirs, and when both that and the former debt are to be accumulated in one sum, and put in one bond, this uses to be done by a bond of corroboration, wherein the former obligation is narrated, and the subsumption is the same as is before mentioned, so as either you accumulate the bygone annualrents or not, and then you subjoin: ‘ *And also see-* ‘ ing

ing the said *B.* has presently advanced and
 paid to me the sum of _____ wherewith
 I hold me well contented and satisfied, and
 that equity and reason requiring that he should
 be secured for the same, and also for the
 sums above mentioned, extending in the
 whole to the sum of _____ therefore, &c.
 to pay the aforesaid whole extended principal sum of _____

Bonds of corroboration may be by themselves, or joined with writs of another kind: As for example, bonds of corroboration may be in contracts or agreements, and assignations, &c. I shall here set down a bond of corroboration and a ratification ingrossed in one writing, from which you may take an idea of all others, and know how to make the like composition.

A BOND of CORROBORATION and RATIFICATION by a Son, of a Contract and Agreement made by the Father.

BE it known, &c. me *A.* Forasmuch as
 (Here narrate the contract) And I being very well satisfied with the foresaid contract and agreement, and most willing to ratify and corroborate the same, therefore wit me, not only to have ratified and approved, likeas I, by these presents, for all right that
 O I now

‘ I now have, or which shall afterwards fall
 ‘ or accresce to me, ratify and approve the
 ‘ contract and agreement above mentioned,
 ‘ in the whole heads, articles and clauses
 ‘ thereof, conceived, or that may be inter-
 ‘ preted in favour of the said *B.* and her
 ‘ forefaids, dispensing with the generality of
 ‘ this ratification, and admitting the same to
 ‘ be as valid and sufficient, as if the same
 ‘ had been *verbatim* inserted and ingrossed
 ‘ herein : *And farther*, in corroboration of
 ‘ the same contract, and without prejudice or
 ‘ derogation thereunto, or to any diligence
 ‘ competent to follow thereupon, *sed accu-*
 ‘ *mulando jura juribus*, wit ye me to be bound
 ‘ and obliged, as I, by these presents, bind
 ‘ and oblige me, my heirs, as well male, &c.
 ‘ conjunctly and severally with my said fa-
 ‘ ther and his said cautioners, (*renouncing the*
 ‘ *benefit of the order of discussing the said*
 ‘ *heirs*) to make due and thankful payment
 ‘ to the said *B.* her heirs, executors or assign-
 ‘ nies, of the foresaid yearly annuity of 1450
 ‘ merks, at the said two terms in the year,
 ‘ *Whitsunday* and *Martinmas*, by equal porti-
 ‘ ons, beginning the first term’s payment
 ‘ thereof at ——— next to come, for what
 ‘ shall be then due, and so forth yearly and
 ‘ termly thereafter at the terms above menti-
 ‘ oned, by equal portions, during all the
 ‘ days of her lifetime, and that free of all
 ‘ publick burdens or deductions whatsoever,
 ‘ either

either already imposed upon liferent-annuities, or that shall hereafter be imposed by any law or act, without longer delay, with the sum of 100 *l.* money foresaid of liquidate expences for each term's failzie *toties quoties*. It is always hereby provided and declared, That her accepting of this present corroboration shall noways derogate from, nor be prejudicial unto the clauses irritant, and other provisions contained in the said contract, which are conceived in favour of the said *B.* Follows a clause of relief by the father to the son.

Of BONDS of INTERDICTION, and of OBLIGEMENTS by Persons interdicted.

A Bond of interdiction is a writing wherein a party, acknowledging his weakness and levity, or readiness to hurt himself, does therefore interdict and bind himself, that he shall not act without consent of persons therein mentioned, who are called interdictors, and are as curators, tho' they be not obliged for intromission or omission; but only to consent with the person interdicted, and are liable for any fraud or fault in consenting. It is a kind of inhibition, and hath the same effect, provided the party was truly weak and lavish. The form of such a bond is thus.

‘ **BE** it known, &c. me *A. Forasmuchas,*
 ‘ by the facility of my nature, and
 ‘ small experience to manage my worldly af-
 ‘ fairs, and other too palpable infirmities that
 ‘ follow me, I may be induced, by perswasion
 ‘ of crafty and evil disposed persons, to make
 ‘ and grant alienation, discharge or renuncia-
 ‘ tion, of my lands, tenements, annualrents,
 ‘ heritages, debts, sums of money, goods and
 ‘ gear pertaining, or that shall happen to per-
 ‘ tain to me in time to come, to one person
 ‘ or other, to my great hurt, enormity and
 ‘ lesion, if I be not defended by the council
 ‘ and advice of some discreet and understan-
 ‘ ding person against all such transactions:
 ‘ And I putting entire trust and confidence in
 ‘ *B.* and *C.* by whose counsel and advice I
 ‘ intend to direct all my actions, affairs and
 ‘ business, *therefore wit ye me,* of my own
 ‘ free will and motive, without being any-
 ‘ ways compelled or induced thereto, but
 ‘ merely for my own good, utility and pro-
 ‘ fit, to have interdicted, as I, by the tenor
 ‘ hereof, interdict myself to the said *B.* and
 ‘ *C.* and bind and oblige me, that I shall not
 ‘ make nor grant any disposition, assignation,
 ‘ alienation, discharge, or renunciation, of
 ‘ my lands, heritages, tenements, annualrents,
 ‘ debts, sums of money, goods, gear, and o-
 ‘ thers whatsoever, pertaining, or that shall
 ‘ happen to pertain to me in time coming; and
 ‘ that

' that I shall not affect nor burden my said he-
 ' ritages, or other interest, either heritable or
 ' moveable, by any deed to be done by me, nor
 ' shall I contract any debts, become cautioner
 ' for any person, nor grant bond or obligation
 ' for any sums of money, or performance of
 ' any other deed whatsoever, upon which
 ' the foresaid lands, annualrents, and other
 ' heritages, may be adjudged or evicted in
 ' whole or in part, or any of my moveable
 ' goods, poulded, distrinzed, and apprised,
 ' and for which I may be charged and de-
 ' nounced to the horn, wherethrough my (a)
 ' escheat and liferent may fall, and my per-
 ' son be imprisoned, and that I shall not bar-
 ' gain, block nor buy, from or with any
 ' person or persons whatsoever, nor do any
 ' other thing, directly or indirectly, where-
 ' by my said lands, heritages, and others
 ' foresaid, whether heritable or moveable,
 ' pertaining to me, or that shall belong to me,
 ' as apparent heir to, &c. may be anyways
 ' burdened or distressed, as said is, without
 ' the special advice, consent and assent of the
 ' said B, and C. first had and obtained thereto
 ' in writing under their hands; and whatever
 ' shall be done in the premises, without the
 ' foresaid consent so had and obtained, shall
 ' be void and null, and of no force, strength
 ' or effect, in all time coming, with all that

O 3

can

(A) See the note on page 95.

' can follow thereupon. And to the effect
 ' that no person may pretend ignorance of this
 ' my interdiction, I am content that letters be
 ' raised hereupon for publication hereof at
 ' the market-crofs of, &c. and other places
 ' needful, and that the same, with these pre-
 ' sents, be registred in the books of council
 ' and session, or any other competent register,
 ' therein to remain *ad futuram rei memoriam*;
 ' and constitute, &c.

A shorter Form of INTERDICTION.

' **B**E it known, &c. me, &c. lawful son
 ' to, &c. Forasmuch as I, considering
 ' the facility of my nature, that not only I
 ' may be induced and inticed to become cau-
 ' tioner for divers persons, for payment of
 ' sums of money, or for performing of other
 ' deeds, but also to borrow sums, and do o-
 ' ther deeds, whereby my person may be
 ' troubled, and my lands, goods and gear ad-
 ' judged from me, my heirs, executors and
 ' successors; and, being careful to prevent
 ' the same, having sufficient proof and expe-
 ' rience of the good-will and favour born to
 ' me by, &c. and, &c. therefore, and for di-
 ' vers other good causes and considerations
 ' moving me, *wit ye me* to be bound, obliged
 ' and interdicted, as I, by these presents, bind,
 ' oblige, and interdict myself to the said, &c.
 ' any

' any one of them, being on life, that I shall
 ' not become cautioner for any person or per-
 ' sons whatsoever, for payment of sums of
 ' money, nor for performing of any deeds or
 ' facts; nor yet shall I contract debts, nor do
 ' any other deeds whatsoever, nor subscribe
 ' contracts, bonds, obligations, dispositions, nor
 ' other rights whatsoever; without the advice
 ' and special consent of the forenamed per-
 ' sons, or any one of them, being on life for
 ' the time, first had and obtained thereto in
 ' writing: Declaring and consenting, by thir
 ' presents, that all contracts, bonds, obligati-
 ' ons, dispositions, and other writs whatsoever,
 ' to be subscribed without the consent of the
 ' foresaid persons, at least of any one of them,
 ' being on life for the time, first had and
 ' obtained thereto in writing, or subscribed by
 ' them, shall be null, and of no avail, force,
 ' strength, or effect, with all that shall follow
 ' thereupon, &c.

*Another kind of INTERDICTION, with
 sundry unusual provisions.*

' **B**E it known, &c. me *A. Forasmuchas* I
 ' do consider, that, by the weakness of
 ' my sight, there be many advantages taken
 ' of me, and I may be induced and enticed,
 ' not only to subscribe and become cautioner
 ' for divers persons, for payment of sums of
 ' money,

“ money, or for performing of other deeds,
 “ but also to grant bonds, as it were, for bor-
 “ rowed money, and do other deeds where-
 “ by my person may come to be troubled, and
 “ my lands, goods and gear apprifed, or ad-
 “ judged from me, my heirs and successors;
 “ and I being careful to prevent these incon-
 “ veniencies, and withal having sufficient proof
 “ and experience of the good-will and kind-
 “ ness born to me by *E.* and *D.* therefore, and
 “ for divers other good causes and considerati-
 “ ons moving me, *wit ye me* to be bound, ob-
 “ liged and interdicted, as I, by thir presents,
 “ (under the reservation, and upon the exprefs
 “ provisions and conditions after mentioned)
 “ bind, oblige, and interdict myself to the said
 “ *E.* *D.* and *G.* or any two of them, the said *E.*
 “ being always one, and failing of him, by death
 “ or absence, the said *D.* being always one,
 “ and failing of him, the major part, *that* I
 “ shall not become cautioner for any person
 “ or persons whatsoever, for payment of sums
 “ of money, nor for performing other facts
 “ or deeds, nor shall I contract debts, nor do
 “ any other deed whatsoever, (except as is
 “ hereafter expressed) nor subscribe contracts,
 “ bonds, obligations, dispositions, nor any
 “ other writs whatsoever, without the special
 “ advice and consent of the forenamed per-
 “ sons, or their *quorum*, first had and obtained
 “ thereto by writing, declaring and consent-
 “ ing, by these presents, that all contracts,
 “ bonds,

' bonds, obligations, dispositions, and other
 ' writs whatsoever, to be subscribed by me
 ' without consent of them, or their *quorum*
 ' above written, first had and obtained thereto
 ' in writ, or subscribed by them, shall be null,
 ' and of no avail, force nor effect, with all
 ' that shall follow thereupon; reserving al-
 ' ways full power to me, with consent of S.
 ' my spouse allenarly, and without consent
 ' of any of the forenamed persons, to compt
 ' with my chamberlain and tenants, and to
 ' grant discharge of the yearly duties of my
 ' land, feu and tithe-duties, and also to dis-
 ' charge my debtors of the annualrents that
 ' are presently bygone, or that shall become
 ' due during the continuance of this inter-
 ' diction; which discharges shall be sufficient,
 ' being only subscribed by me and my said
 ' spouse: *And farther*, reserving power to me,
 ' with consent of any two of the foresaid per-
 ' sons to whom I have interdicted myself, to
 ' sell lands or tithes, contract debts heri-
 ' table or moveable, and to grant bonds and
 ' wadsets for the same, or infeftments of an-
 ' nualrent, or to do any other deed whatso-
 ' ever, except the revoking, annulling, quali-
 ' fying, or altering of the interdiction itself,
 ' and which deeds to be done, and securities
 ' to be granted thereanent, shall be valid and
 ' sufficient in favour of the persons to whom
 ' they are given: *And in like manner*, refer-
 ' ving power to myself, with consent of the
 ' said

‘ said *E.* and failing of him, by decease, with
 ‘ consent, as aforesaid, to revoke this present
 ‘ interdiction, and declare the same null, and
 ‘ that by a writ to be subscribed by me and
 ‘ them, and to be registred in the books of
 ‘ council and session, which shall be sufficient
 ‘ for that effect. *Aud, lastly,* It is hereby pro-
 ‘ vided and declared, that this present interdic-
 ‘ tion shall continue for the space of three
 ‘ years after the date hereof, and it shall be
 ‘ lawful to me thereafter, without consent of
 ‘ the forenamed persons, or any of them, to
 ‘ act and do by myself every thing in relation
 ‘ to my affairs, as fully and freely, without
 ‘ their consent, as I might have done before
 ‘ the subscribing hereof, under which express
 ‘ reservations and provisions this present inter-
 ‘ diction is granted, and no otherways, (*Regis-*
 ‘ *tration*) that letters of publication may be
 ‘ directed hereupon in form, as effects.’

Bonds, and other writs, granted by a party
 interdicted, with consent of the interdictors,
 are not different in stile from those made by
 a minor with consent of his curators.

*Of OBLIGATORY CLAUSES insert in
 other Writs.*

IN writs of exoneration or conveyance, it
 is sometimes necessary to insert an oblige-
 ment to reiterate and renew that writ, which

is in this form: ' And I bind and oblige me
' and my forefaids, to reiterate and renew
' this present discharge, keeping always the
' substance above written, whenever I shall
' be desired from time to time, ay and while
' they, and every of them, find themselves
' sufficiently secured thereanent.' — I have
seen this added, ' And to amplify and enlarge
' the same, with all other clauses and expres-
' sions necessary.' In this clause it should be
declared upon whose charges the writs are to
be formed.

A clause to cause ratify and reiterate is
this: ' And I bind and oblige me, and my
' forefaids, to cause my said sisters, &c. and
' failing of them, by decease, their nearest
' lawful representatives, after their perfect
' age of 21 years complete, to ratify and ap-
' prove, and if need be, to reiterate and re-
' new these presents to the said C. or his a-
' bove specified, ay and while he or they find
' themselves sufficiently secured concerning
' the premisses.'

In writs granted by husband and wife, the
husband obliges himself to cause the wife ra-
tify the deed judicially, which obligation is
thus — ' And, in like manner, I the said A.
' bind and oblige me, and my forefaids, to
' move and cause the said B. my spouse, not
' only to subscribe these presents before fa-
' mous witnesses, but also to compear before
' any judge ordinary, and there, out of my
' presence,

' presence, judicially ratify the premisses, and
 ' declare, upon her great oath, that she is now
 ' ways compelled to the granting hereof, but
 ' that she does the same willingly and of her
 ' own accord; and that she, nor no other to
 ' her behoof, shall ever quarrel or impugn
 ' the same, or come in the contrary hereof,
 ' directly, nor indirectly, by any manner of
 ' way, in time coming.' Or rather thus,
 ' And as the said B. my spouse, has voluntar-
 ' rily and freely consented to this disposition,
 ' so she, upon the faith of a christian, has
 ' promised, and I, for her and for myself, ob-
 ' lige me and her, that she shall not only sub-
 ' scribe these presents, &c.'

An obligation to cause a party absent, rati-
 ' fy and sign a writ — ' *Likeas* I the said A.
 ' bind and oblige me, &c. to cause the said B.
 ' betwixt and the — day of — to ratify
 ' this discharge, and to subscribe the ratifi-
 ' cation with his hand, before famous wit-
 ' nesses, and that under the pain and penalty
 ' of — — *Scotr* money, to be paid by me to
 ' the said C. in case of failzie, by and attour
 ' fulfilling of the premisses.'

Of the same form are obligations by a tu-
 tor, curator or factor, to cause the pupil or
 minor, at majority, and the constituent, at his
 return to the kingdom, to ratify and renew
 the bond, or other writ, granted by the cu-
 rator or factor.

It was formerly said, that if the bond has been registred, and real diligence done thereon, the discharge thereof is in a writing apart, and must have a narrative.

Discharge by the principal Creditor to the Debtor himself, of a Bond, &c. which is only registred.

BE it known, &c. me *A. Forasmuchas,*
(Here narrate the bond in common form)
 And now seeing that the said *B.* hath made payment to me of the foresaid principal sum of — and whole bygone annualrents of the same, wherewith I hold me well contented and satisfied, renouncing, &c. *therefore* wit ye me to have exonerated, quit-claimed, and simply discharged, *likeas,* &c. the said *B.* his heirs and executors, of the bond above mentioned, and of the whole sums of money, principal, annualrent, and expences above specified contained therein, and of all letters of horning, poinding, arrestment, and other letters and diligences, if any be raised thereupon, and of all that has followed, or may follow upon the premisses, for now and ever; *which discharge* above written, I bind and oblige me, my heirs and executors, to warrant to be to the said *B.* and his foresaids, a sufficient exoner-

P

‘ ration

‘ration concerning the premisses, at all hands,
 ‘and against all deadly; *likeas* I have instant-
 ‘ly delivered to him the extract of the fore-
 ‘said bond, to be cancelled and destroyed at
 ‘pleasure.’

When the discharge is granted by the creditor’s heir, you need not narrate the service; but, to the granter’s proper designation, add the additional one of *Heir served and retoured to the deceast A. my father*; and then proceed, narrating the bond granted to the predecessor; and the stile of the discharge is the same as if the obligation had been granted to the discharger.

The same is to be observed in a discharge granted by an executor, whose additional designation is, *Executor nominated and confirmed to the deceast B.*

If the granter be both heir and executor, it is, — *me A. brother and heir served and retoured to the deceast* — and *executor discerned and confirmed to him.*

In both which cases it is convenient, after the clause of delivery of the ground of debt, to place an obligation to make the retour, or confirmed testament, forthcoming to the debtor, and there set down their dates.

But if diligence has been raised by the heir, or decret obtained at the instance of the executor, without which it is seldom safe to pay
 an

an executor, these are narrated in common form.

In discharges by an assigney, to the ordinary designation you may add, *assigney after specified*; and, after narrating the bond, you may say, ‘ Which bond, and fums therein contained, are assigned to me the said *A.* by the said *B.* conform to an assignation of the date, &c. And now seeing, &c. therefore I, as assigney, and having right in manner foresaid, by these presents, discharge, &c.’

Discharges of debts due to pupils are granted by the tutor, the stile of which is thus expressed; ‘ Be it known, &c. me *A.* tutor dative to *B.* conform to the letters of tutory dative granted to me under his Majesty’s quarter seal, of the date — therefore I, as tutor foresaid, exoner, &c.’ Some have, ‘ I, as tutor foresaid, and as taking burden upon me for my said pupil, exoner, &c.’ And in the warrandice, ‘ I, for myself, and as taking burden upon me as said is, by these presents, bind and oblige me, my heirs and successors, to warrant, &c.’

When the debt is due to a minor, the discharge is granted by him with consent of his curators, thus; ‘ Me *A.* with the special advice and consent of — my curators, for their interests.’ In the clause of payment the money is not said to be paid to the minor, but to one of the curators, or to their factor, thus; ‘ And now seeing the said *B.*

' hath made payment to C. one of my cura-
 ' tors, for my behoof, of the said sum, &c.
 ' *therefore* wit ye me the said A. with the spe-
 ' cial advice and consent of my said curators,
 ' for their interest, to have exonerated, &c.
 ' Which discharge I, with consent foresaid of
 ' my said curators, bind and oblige me, &c.
 ' to warrant, &c.' Some mention, that such
 a number of the curators is a *quorum*, and
 the name of the curator *sine quo non*.

In discharges of debts, or donations due to
 a wife, the husband, who is her curator, must
 consent; which is thus expressed: ' Be it
 ' known, &c. me A. with the special advice
 ' and consent of B. my husband, for his in-
 ' terest, and me the said B. for myself and
 ' my own right, with consent of, and taking
 ' burden upon me for my said spouse, and us
 ' both, with one consent and assent.' The
 subsumption is, ' And seeing the said C. hath
 ' made payment to me the said A. and my said
 ' husband, of the foresaid sum of ——— where-
 ' with we hold us well contented, and fully
 ' satisfied; *therefore* wit ye us both with one
 ' consent, and me the said B. taking burden
 ' upon me for my said spouse, to have exo-
 ' nered, &c.' And in the warrandice thus;
 ' Which discharge above written, we the said
 ' A. and B. both with one consent, and me
 ' the said B. taking burden upon me for my
 ' said spouse, bind and oblige us conjunctly
 ' and severally, our heirs, successors and exe-
 ' cutors,

‘cutors, to warrant, &c.’ In case the subject discharged be claimed by divers persons, among whom the competition is not determined in judgment, or if the debt be arrested, or otherways affected, the consent of these persons is requisite, the which consent is not expressed, either in the beginning or in the subsumption, but only in the clause of discharge; ‘*Therefore wit ye me, with advice and consent of D, E, &c. for all right and interest that they or any of them have, or can pretend to the said legacy, or any part thereof, by arrestment, assignation, or otherways, to have exonered, &c.*’ And the warrandice is, ‘*And I the said D. for myself, and as assigney foresaid, and I the said E. bind and oblige us, each of us for our own parts, to warrant this discharge from all arrestments laid on at our instance in the hands of the said — and from all other facts and deeds done, and to be done by us, prejudicial hereunto allenarly.*’

When the discharge is granted by many persons, of a subject common to all, the discharge is thus; ‘*Therefore wit ye us, each of us for our own parts, to have exonered.*’ And the warrandice is, ‘*— oblige us, each of us for our own parts, to warrant, &c.*’

A discharge by a factor is thus; ‘*I A. factor constituted by B. conform to a factory dated — registred in the books of council and session, upon — grant me to have*

' received from C. the sum of ——— men-
 ' tioned in the said factory, and hereby dis-
 ' charge him, his heirs, successors, and all o-
 ' thers whom it effects, of the said sum of
 ' ——— and oblige my said constituent to
 ' warrant this present discharge to the said C.
 ' and his forefairs, at all hands, and against
 ' all deadly, as law will.' Or thus; ' I A.
 ' factor specially constituted by B. conform to
 ' the factory and commission given by him to
 ' me, of the date ——— registred in the
 ' books of council and session, upon ———
 ' grant me to have received from C. the sum
 ' of ——— contained in a bond, &c. And
 ' farther, I, as factor foresaid, grant me to
 ' have received (another sum) therefore I, by
 ' these presents, exoner, &c. the said C. and
 ' his said cautioners, of the foresaid principal
 ' sum of ——— &c.'

A renunciation of conditions, exceptions or
 reservations, in charters or dispositions sub-
 joined to a discharge, is thus; ' And renoun-
 ' ces any interest that the said B. can pretend
 ' by virtue of that bond, hereby discharged,
 ' to the lands and estate belonging to the said
 ' C. by virtue of the exception or reservation
 ' contained in the disposition made by the said
 ' B. to the said C. of the lands therein menti-
 ' oned; and, as factor foresaid, I bind and
 ' oblige the said B. his heirs, successors and
 ' executors, to warrant this discharge to be,
 ' &c.

If the discharge be granted to the debtor's heir or executors liable in payment of the debt, after the narrative in the subsumption, the stile is; 'And now seeing *A.* heir served and retoured (*or executor decerned and confirmed*) to the said deceast *A.* his father, hath made payment to me, &c. therefore to have exonered the said *A.* his heirs and executors, and all others, the heirs, executors, and representatives of the said deceast *C.*'

In discharges given to factors the subsumption is; 'And seeing *A.* as factor for, and in name and behalf of *A.* hath made payment, &c.' But the discharge is given to the constituent who was bound. The same may be said of tutors and curators.

When a stranger pays the money, it is either by verbal order, or the money is intrusted to the payer, and then he has the relation of a factor; but if none of these cases happen in the discharge, the receipt of the money must bear the payer's name; but, in the discharge, mention is only made of the debtor, but in the first case the name of both is expressed. Take this example: 'I *A.* grant me to have received from *B.* the sum of — which, with the sum of — allowed to — makes in all the sum of — as the teind-duty payable to me by the tenants of *C.* for the crop and year of GOD 1764, as also I grant me to have received from the
said

' said *B.* the sum of ——— which was paid to
 ' him by *D.* in part of his bygone rent; and
 ' *therefore* I, by these presents, exoner and dis-
 ' charge the said *B.* and the tenants of *C.* of
 ' the foresaid teind-duty for the crop 1764,
 ' and him and the said *D.* of the foresaid sum
 ' of ——— in part of the bygone rent of
 ' ——— *And* I bind and oblige me, and my suc-
 ' cessors, to warrant this discharge to him and
 ' them *respective*, at all hands, and against all
 ' deadly.'

Again, the principal debtors, to whom the
 discharge is granted, are either such against
 whom no personal diligence or attachment
 has been used, as denunciation and imprison-
 ment, or they underly these difficulties; in
 which last case, to the stile of the discharge
 other clauses are added, as you shall see by
 and by; or his goods, moveable or immove-
 able, are affected for payment of the debt, the
 first by arrestment, the other by infestment
 of annualrent, wadset, apprising or adjudica-
 tion: of which sort of discharges the stile
 is given hereafter, which is various, accord-
 ing to the diversity of the subject, and circum-
 stance of persons.

If the debtor be denounced to the horn,
 and registred, and imprisoned for not-pay-
 ment of the debt, when he satisfies the same,
 the discharge must have a warrant to suspend
 and relax from the horn, and to be put at
 liberty, without caution or consignation;

and

and besides the ground of the debt, whether bond or decret, the diligence raised on it must be narrated in the discharge, in common form, and in the body of the writ must be discharged thus: — ‘ And of all letters
 ‘ of horning, poinding, inhibition, arrestment,
 ‘ caption, and others raised thereupon, with
 ‘ the executions thereof, and all that has followed, or which may follow upon the same:
 ‘ *And* I am content and consent, that so many of the persons above named, as are denounced to the horn for the cause foresaid, be freed and relaxed from the same; *as also*, that the said *D.* be freed and put to liberty, forth of the tolbooth of ————
 ‘ where he presently remains, without either
 ‘ caution or consignation.’

If there be no registred denunciation, or if the debtor be not imprisoned, then you leave out that part of the stile of the discharge which relates to these two circumstances.

Discharges have a different form and stile arising from the quality of the subject discharged, which is either moveable or heritable; among moveables, which cannot be well enumerated, are reckoned ‘ Sums of
 ‘ money due by bond, legacies, bairns part
 ‘ of gear, intromission with goods, tutor
 ‘ and curator accompts, factories, processes,
 ‘ and depending actions, arrestments and
 ‘ decreets, discharge of personal execution,
 ‘ refer.

‘ reserving real action against the lands of the
 ‘ debtor, bonds of interdiction, *and the like.*
 Among heritable subjects we count infestments
 of annualrents, adjudications, appraisings, wad-
 sets, reversions, &c.

Discharges of bonds for borrowed money are
 already treated of, follows the stile of a dis-
 charge of a legacy: ‘ Be it known; &c. me A.
 ‘ *Forasmuch as, (Here narrate the testament)* And
 ‘ now seeing the said B. executor (nomina-
 ‘ ted) hath made payment to me of the fore-
 ‘ said sum of ——— left in legacy to me
 ‘ by the said C. in manner foresaid, where-
 ‘ with I hold me well contented and satisfied;
 ‘ *therefore, wit ye me to have exonerated, &c.*
 ‘ the said B. his heirs and executors, of the
 ‘ foresaid sum of ——— of legacy above men-
 ‘ tioned, and of all action and execution com-
 ‘ petent, or that may be competent to me a-
 ‘ gainst him, and his forefairs, hereanent, for
 ‘ now and ever, &c.

DISCHARGE *by a Son to a Father and
 elder Brother, of all bairns Part of
 Gear, and Provision.*

‘ **BE** it kown, &c. me A. *Forasmuch as* C.
 ‘ my brother-german, by his letters of
 ‘ alienation and disposition, of the date, &c.
 ‘ hath

' hath disposed to me, and the heirs male
 ' &c. which failing, &c. *as in the original*
 ' *disposition, all and baill, &c. as in the said*
 ' letters of disposition and alienation, contain-
 ' ing a reservation of my father's liferent
 ' during all the days of his lifetime, at more
 ' length is expressed; *And seeing* the foresaid
 ' disposition is granted to me in full conten-
 ' tation and satisfaction of all bairns part of
 ' gear, portion natural, executry, legacies, or
 ' any other provision whatsoever, that I can
 ' ask or claim by the decease of the said *A.* my
 ' father, or of umquhile ————— my mo-
 ' ther, wherewith I hold me well contented
 ' and satisfied; *therefore, wit ye me* to have ex-
 ' onered, &c. as I, by these presents, &c.
 ' the said *A.* and *B.* his eldest son, their heirs
 ' and executors, of all bairns part of gear,
 ' portion natural, executry, legacy, or other
 ' provisions whatsoever, that I can ask, claim
 ' or crave, by the decease of the said *A.* my
 ' father, when the same shall happen at the
 ' pleasure of GOD, or of umquhile———
 ' my mother, and of all action and execution
 ' competent, or that may be competent to me
 ' thereanent, for now and ever.' Which dis-
 ' charge, &c.

DISCHARGE

DISCHARGE of *Intromission with Goods.*

‘ **B**E it known, &c. me *A. Forasmuchas*
 ‘ *B.* hath made compt, reckoning and
 ‘ payment to me of all his intromissions with
 ‘ the customs, excise and bullion, and [with
 ‘ all seizures and casualties of goods and mer-
 ‘ chandize, imported to and exported from
 ‘ *Leith*, from the first of *November* 1763, to
 ‘ the fourth of *October* 1764, *inclusive*, and
 ‘ of his intromission with the imposition due
 ‘ to the town of *Edinburgh*, for all wines, and
 ‘ all foreign beer and ale, from the 12th of
 ‘ *November* 1763, to the 9th of *November*
 ‘ 1764 *inclusive*. With which accompts and
 ‘ payments I hold myself well contented and
 ‘ satisfied; and *therefore*, I, by these presents,
 ‘ exoner, &c. the said *B.* his heirs and exe-
 ‘ cutors, of his whole intromission with the
 ‘ foresaid customs, excise and bullion, and
 ‘ with the foresaid seizures and casualties of
 ‘ all goods and merchandize imported to and
 ‘ exported from *Leith*, from the said first of
 ‘ *November* 1763, to the said fourth of *Octo-*
 ‘ *ber* 1764 *inclusive*, and of his intromission
 ‘ above mentioned, with the imposition due
 ‘ the town of *Edinburgh*, for all wines, and
 ‘ of all foreign beer and ale, from the 12th
 ‘ of *November* 1763, to the said ninth of *No-*
 ‘ *vember*

'ember 1764. inclusive, and of all action,
 ' &c. Which discharge above written, I ob-
 'lige me to warrant, &c. excepting and re-
 'serving always from this present discharge,
 'and warrandice thereof above mentioned,
 'such debts and sums of money as the said
 'B. hath given up to me, to be resting of the
 'excise, and of the bonds and tickets particu-
 'larly mentioned in four fitted accompts sub-
 'scribed by him and me on the ——— day of
 '———— last: And in case it shall be found
 'that any of the sums therein specified, gi-
 'ven up as resting, be paid, then the said B.
 'is to be liable for the same, notwithstanding
 'of this present discharge, conform to his
 'obligement upon the end of the foresaid four
 'accompts.'

*Of DISCHARGES by Minors to their
Tutors.*

A Discharge by a minor, with consent of
 his curators, to one who had been his
 tutor, is in this form. 'Be it known, &c.
 'A. with the special advice and consent of C.
 'and D. my curators, for their interest, For-
 'asmuch as B. having been tutor nominated
 'to me the said A. and having accepted of
 'that office, and acted accordingly; and I and
 'my said curators considering that the said

Q

' tutor

' tutor had not any actual intromission with
 ' any money or means belonging to me, ex-
 ' cept 3000 merks which was uplifted by
 ' him, and employed first in the hands of
 ' ——— and afterwards uplifted from him,
 ' and now in the hands of ——— but allow-
 ' ed *F.* my kinsman, who was formerly intrust-
 ' ed by my mother to receive any annual-
 ' rents that were uplifted for our use, since
 ' his acceptation of the foresaid office, and
 ' who accordingly hath made clear compt,
 ' reckoning and payment of his intromissions
 ' therewith, conform to a fitted and subscri-
 ' bed accompt betwixt him and the said *F.* and
 ' the said tutor hath made compt, reckoning
 ' and payment to me and my said curators,
 ' of what was intromitted with by the said *F.*
 ' conform to the said tutor's allowance. *And*
 ' I, and my said curators above named, *being*
 ' very sensible of the great care and kindness,
 ' fidelity and diligence of the said tutor, my
 ' friend, in the management of my affairs du-
 ' ring the time of my tutory, and having now
 ' received from him such of the writs and e-
 ' vidents of the means and money belonging
 ' to me as were in his hands; *and being* most
 ' willing, for the causes and upon the confi-
 ' derations before mentioned, to grant to my
 ' said tutor a full and ample discharge of the
 ' premisies, *therefore wit ye me*, with advice
 ' and consent of my said curators, to have ex-
 ' onered, quit-claimed, and simply discharged,
 ' and,

‘ and, by these presents, exoner, &c. the said
 ‘ B, tutor aforesaid, of all goods, gear, debts,
 ‘ sums of money, moveables, and other estate
 ‘ whatsoever pertaining to me, which were
 ‘ intromitted with by him, and of all writs
 ‘ and evidents pertaining and belonging to me,
 ‘ and of all intromissions and omissions where-
 ‘ with he might have been charged relating
 ‘ to his said office; dispensing with the gene-
 ‘ rality, &c.

The discharge hath sometimes a receipt of
 the writs in the subsumption, as thus: ‘ And
 ‘ also, seeing the said B. hath delivered to me,
 ‘ for myself, and in name of my said sisters,
 ‘ the bonds, accompts, and other writs after
 ‘ specified, *to wit, (Here mention them in com-
 ‘ mon form of inventory)* together likeways
 ‘ with several letters of horning, caption, and
 ‘ other diligences done upon the same bonds
 ‘ and accompts.’

The clause of receipt of the writs is more
 general in some discharges, thus: ‘ As also,
 ‘ seeing the said C. and D. who had the whole
 ‘ custody and keeping of the writs and rights
 ‘ of my estate, have, for themselves, and in
 ‘ name and behalf of my other tutors, now
 ‘ delivered up to me, and to my curators, the
 ‘ whole bonds, obligations, assignations, trans-
 ‘ lations, contracts, dispositions, infestments,
 ‘ and other writs whatsoever pertaining to me;
 ‘ together also with the whole instructions of

‘ the discharge of all their intromissions and
 ‘ compts, whereof I grant the receipt; and
 ‘ have also delivered to me the moveable
 ‘ heirship, with the household-plenishing, which
 ‘ was confirmed in my father’s testament; and
 ‘ which remained unrouped and not sold; and
 ‘ whereof I also grant the receipt; *therefore*
 ‘ wit ye me, &c.’

Or yet more general, thus: ‘ And having
 ‘ now received from them all the writs and e-
 ‘ vidents of my estate, which were in either
 ‘ of their hands, and also having received
 ‘ from the said ——— the writs concerning
 ‘ the ward and marriage, which was gifted,
 ‘ &c. which were particularly intrusted to him
 ‘ by the other tutors.’

If the discharge contain an exoneration to
 a factor appointed by the tutor, the narrative
 is in this form: ‘ Forasmuchas *B.* tutor da-
 ‘ tive to us, hath quit and given over his of-
 ‘ fice of tutory, at the desire of some of our
 ‘ best friends, and granted a factory to *C.* for
 ‘ the managing and guiding of our whole e-
 ‘ state and means, in manner specified in the
 ‘ letters of factory granted thereanent; and
 ‘ seeing the said *C.* hath most faithfully, and
 ‘ really, and actually, discharged the trust that
 ‘ was committed to him as factor aforesaid,
 ‘ and hath now made compt, reckoning and
 ‘ payment to me the said *A.* for myself, and
 ‘ as curator to my said sisters, of the whole
 ‘ sums of money, and others, which pertain-

‘ ed

' ed to us, and which were intromitted with
 ' by him, or should have been intromitted
 ' with by his said constituent, as the accompt
 ' delivered by him to us, containing the whole
 ' charge, with the discharge and instructions
 ' thereof, subscribed by him and also allowed
 ' and subscribed by me the said _____
 ' at more length proports, and also hath deli-
 ' vered the writs, &c. *therefore wit ye* us, all
 ' with one consent, for ourselves, and as ha-
 ' ving right to that part of the foresaid sums
 ' which belonged to _____ our sister, by
 ' expresse quality of the bond of provision, a-
 ' bove specified, granted by our said father,
 ' and me the said *A.* as curator to, and taking
 ' burden upon me for the said _____
 ' my sisters, to have exonered, &c. the said *C.*
 ' and also the said *B.* tutor above nominated,
 ' his constituent, their heirs and executors,
 ' of the whole premisses, and of all and what-
 ' soever debts, sums of money, goods, gear,
 ' and others whatsoever, which we, or any
 ' of us, our heirs or executors, can ask, claim
 ' or crave of the said *C.* as factor for our said
 ' tutor, or from the said *B.* his constituent, by
 ' whatsoever manner of way, and of all acti-
 ' on, &c.'

Or if one of the tutors was appointed by
 the others factor and intromitter, the narra-
 tive, subsumption and discharge are in this
 form: *Forasmuch as* the deceast *A.* and *B.*

Q.3

' *C.* and

‘ *C.* and *D.* being nominated tutors by my
 ‘ said father to me, did accept the foresaid
 ‘ office, and granted a factory to the said *D.*
 ‘ one of their own number, for intromitting
 ‘ with my means and estate, and management
 ‘ of my affairs, during the whole time that I
 ‘ was under the years of tutory; *and now*
 ‘ *seeing* the said *D.* one of my said tutors;
 ‘ who was factor constituted by the rest, hath
 ‘ given in to me the compt of his intromissi-
 ‘ ons with my money, means and estate, and
 ‘ of his depursements, charge and discharge
 ‘ of the same, during the years of my tuto-
 ‘ ry; *therefore*, and in regard the said *D.* hath
 ‘ made payment to me and my said curators of
 ‘ the sum of ——— which was the balance of
 ‘ the discharge of his intromissions, whereof
 ‘ I grant the receipt, and hold me well con-
 ‘ tent, &c.’

In this case the clause of discharge should
 begin with a ratification of these and of all
 discharges, &c. thus; ‘ Therefore, &c. not
 ‘ only to have ratified and approven, as I, &c.
 ‘ the factory above mentioned, granted by
 ‘ my said tutors to the said ——— and all
 ‘ that my said tutors, and the said ——— as
 ‘ factor foresaid, have done in the exercise of
 ‘ the said offices, and their said intromissions,
 ‘ and the accompts of charge and discharge
 ‘ given in to me, and the whole instructions
 ‘ of the said several discharges, as also the
 ‘ discharges granted by the said ——— as factor
 ‘ constituted

‘constituted by the said tutors; and I do ap-
 ‘prove and allow the whole premisses, and
 ‘declare myself fully satisfied and pleased
 ‘therewith, *but likewise* to have exonerated,
 ‘&c.’

But if one or more of the tutors had the
 sole intromission with the pupil's estate by
 permission, and not by factory or commission,
 the narrative is, ‘And also the said C. and D.
 ‘had the only intromission of my estate, and
 ‘took particular care in the management of
 ‘my affairs, from the time of their accept-
 ‘ing the foresaid office of tutor; *and seeing*
 ‘the said C. and D. two of my said tutors, and
 ‘sole intromitters with my estate, rents and
 ‘annualrent thereof, have given in to me, and
 ‘my said curators, the accompts of their in-
 ‘tromissions and depursements during the tu-
 ‘tory, with the charge and discharge of the
 ‘same, together with the instructions of the
 ‘discharge of the said accompts, &c.’

The motive or conclusion of the subsump-
 tion is various; as, ‘And I having at length
 ‘seen, and duly and fully considered the same,
 ‘I acknowledge the instructions of the said
 ‘depursements and discharge to be true and
 ‘of verity, and that the actings of my said
 ‘tutors (curators) and factor, since the de-
 ‘cease of my said father to this time, have
 ‘been for my well and advantage.’

In another form, thus; ‘And now seeing
 ‘that the said B, hath made compt, reckon-
 ‘ing

'ing and payment to me of his intromissions
 ' with my whole money, means, moveables,
 ' goods and estate, and with the mails, pro-
 ' fits, and duties of my lands, during the
 ' whole time of his tutory to me, and hath
 ' given in to me the charge and discharge of
 ' the same, together with the instructions of
 ' the discharge; *and I being* fully satisfied and
 ' well pleased with the said accompts, and
 ' with the articles and instructions thereof,
 ' and withal, being fully convinced of the care
 ' and kindness of my said tutor, and of his
 ' concern for my interest since my father's de-
 ' cease, *therefore, &c.*'

In a shorter form, ' And being most willing,
 ' for the causes, and upon the considerations
 ' before mentioned, to grant to my said friends
 ' a full and ample discharge of the premises;
 ' *therefore, &c.*'

The clause of discharge is also thus; ' Of
 ' all goods, gear, debts, sums of money, move-
 ' ables, mails, duties of lands, and of all other
 ' means and estate whatsoever pertaining to me,
 ' for myself, or as heir or executor to my said
 ' deceased brother, or other of my predeces-
 ' sors, which were intromitted, or might have
 ' been intromitted with by them, and of all
 ' writs and evidents pertaining and belonging
 ' to me, and of all intromissions and omissions,
 ' *&c.*'

Or in a better form, thus; ' Of the whole
 ' intromissions had by (*the said D.*) my said
 ' tutors

' tutors and curators, and factor foresaid, with
 ' my estate, rents and annualrents thereof,
 ' and of the moveable heirship, and whole
 ' silver-plate, household-plenishing, lying mo-
 ' ney, gold and silver, which were confirmed
 ' in the testament of the deceast —————
 ' my father. *And farther*, for certain one-
 ' rous causes and considerations moving me,
 ' wit ye me, of my own proper motive, and
 ' certain knowledge, to have exonered, &c.
 ' my said tutors (*and curators*) that are now
 ' on life, their heirs and executors, and the
 ' heirs, executors, and other representatives
 ' of the said umquhile ——— And the said
 ' D. not only as one of the said tutors (*and*
 ' *curators*) but likeways as factor constituted
 ' by the said tutors, for themselves and me, of
 ' their said tutory, (*and curatory*) and factory,
 ' and of all omissions and negligence whatso-
 ' ever that may be laid to their charge, rela-
 ' ting to the exercise of their said offices of
 ' tutory, (*curatory*) and factory, and of all ac-
 ' tion competent to me against them, or any
 ' of them thereupon, and of the whole bonds,
 ' obligations, assignations, translations, contracts,
 ' dispositions, charters, infeftments, sasines,
 ' and other writs of my estate; and of the
 ' whole instructions of the discharge of their
 ' accompts of the intromissions had by my said
 ' tutors, (*curators*) or factors, which are now
 ' delivered up to me, as said is; *and* of all acti-
 ' on competent to me against my said tutors,
 ' (*curators*)

‘ (*curators*) and factor, for making farther
 ‘ compt and reckoning to me, or for deliver-
 ‘ ing to me the writs and evidents, and others
 ‘ above mentioned, or on whatsoever other
 ‘ ground that may result upon the said tuto-
 ‘ ry, (*curatory*) or factory, so as these presents
 ‘ shall be an ample and absolute discharge to
 ‘ them concerning the whole premisses.’

In discharges of offices, as tutory, curatory,
 factory, and the like, and in all general dis-
 charges, after enumeration of some of the spe-
 cies of the goods intromitted with, there is
 a declaration dispensing with that generality,
 in this form: ——— ‘ Dispensing with the
 ‘ generality of this present discharge, and ad-
 ‘ mitting the same to be as valid, effectual and
 ‘ sufficient, to all intents and purposes, as if
 ‘ every particular were specially mentioned
 ‘ and expressed, whereanent we have dispen-
 ‘ sed, and by these presents dispense (*with con-
 ‘ sent aforesaid*) for ever.’

Or thus: ‘ ——— ‘ And we declare this our
 ‘ discharge to be as valid and sufficient to them,
 ‘ as if the same were more special and particu-
 ‘ lar; whereanent we all with one consent,
 ‘ have dispensed, and by these presents dis-
 ‘ pense for ever, and renounce all exceptions
 ‘ in the contrary.’

If any of the tutors, or the factor, be ow-
 ing money to the pupil, or if there be rents
 or annualrents uplifted, and not compted for,
 this declaration or exception is to be subjoin-
 ed

ed to the warrandice : ‘ Declaring, never-
 ‘ theless, that this discharge, nor any clause
 ‘ contained therein, shall not prejudice the
 ‘ bonds after mentioned, and obligation un-
 ‘ der written, *viz.* Which bonds, and whole
 ‘ clauses and obligations thereof, are to con-
 ‘ tinue in their full force and vigour, not-
 ‘ withstanding of this present discharge, or
 ‘ any thing contained therein ; neither shall
 ‘ the same prejudice me of any bygone rents
 ‘ that are yet resting by my tenants, or of
 ‘ any rents which are intronitted with by my
 ‘ chamberlains, and not yet paid in, nor comp-
 ‘ ted for to my said tutors ; so that it shall still
 ‘ be lawful to me to call them, or their heirs,
 ‘ to account thereanent, in so far as they have
 ‘ not compted already in manner foresaid.’

Some put this declaration by way of pro-
 vision before the warrandice, and make the
 discharge to be warranted under that provi-
 sion, which is thus : ‘ Providing always, that
 ‘ my granting of this present discharge shall
 ‘ noways hinder or impede me to call for
 ‘ such rests as are yet due by my tenants
 ‘ or uplifted from them by the present fac-
 ‘ tor, and which are not yet compted for by
 ‘ him to me ; *which discharge* I oblige me to
 ‘ warrant, &c. under the provision always a-
 ‘ bove specified.’

In case the tutor be any way bound or en-
 gaged for the pupil, an obligation of relief
 is needful, which is thus ; ‘ And, lastly, I bind
 ‘ and

' and oblige me, and my foresaids, to war-
 ' rant, free, relieve, and skaithless keep my
 ' said tutors (*or curators*) and their foresaids,
 ' and the representatives of such of them as
 ' are dead, from payment of all sums of mo-
 ' ney, principal, annualrents and penalties,
 ' wherein they stand engaged for me, or the
 ' deceast ——— my brother, by bond, con-
 ' tract, or any other manner of way whatso-
 ' ever, as tutors (*or curators*) to us, or ei-
 ' ther of us, at any time preceeding the
 ' day and date of these presents, if any of
 ' these bonds shall happen to be found un-
 ' retired, or uncanceled; and of all cost,
 ' skaith, damage, or expences and interest,
 ' that they, or any of them, or their fore-
 ' saids, shall happen to sustain or incur there-
 ' through in any sort.'

In these discharges mention is made of
 signed accompts of charge and discharge of
 the tutor and factor's intromissions and de-
 pursements; at the end of which compt and
 reckoning, there is a docquet of this form;
 ' At *Edinburgh*, the ——— day of ——— 1764,
 ' This is the accompt and charge of the
 ' means, money, rents and annualrents,
 ' which belonged to the said *A.* the time of
 ' his father's decease, and since, with the
 ' discharge thereof, fitted and cleared be-
 ' twixt the said *A.* and *B.* for himself, and as
 ' tutor and factor for, and in name of the
 ' said *A.* his other tutors (*and as curator to*
 ' him,

‘ him, and in name of the other curators) and,
 ‘ in respect the said *A.* is fully satisfied with
 ‘ the foresaid accompt, both charge and dis-
 ‘ charge thereof, and has received the whole
 ‘ instructions and balance of the same, there-
 ‘ fore he discharges the said *B.* and all his o-
 ‘ ther tutors (*and curators*) of all he can lay
 ‘ to their charge, or intromissions and omissi-
 ‘ ons, conform to a particular discharge given
 ‘ by the said *A.* to them of this date, under
 ‘ the exceptions therein mentioned. *In wit-*
 ‘ *ness* whereof the said *A.* and the said *B.* for
 ‘ himself, and in name foresaid, have subscri-
 ‘ bed this and the twenty preceeding pages,
 ‘ in presence of, &c.’

*Of DISCHARGES granted by a Major
 to his Curators.*

THere is little difference in discharges of
 a curatory from those of a tutory, for
 the obligation of both is the same, so what is
 said concerning tutors serves for curators if
 nominated by the father, but, if they were
 chosen by the minor, you mention in the nar-
 rative of the discharge, that, and the accep-
 tance of the curators, thus; ‘ *Forasmuch as B,*
 ‘ *C,* and *D.* were curators elected and chosen
 ‘ by me, and accepted of that office, and I,
 ‘ with their consent, did grant a factory to
 ‘ the said *D.* for intromitting with my means

R

‘ and

‘ and estate.’ Or when the persons discharged were both tutors and curators, after a narrative which respects the tutory, you say,
 ----- ‘ *Likeas*, after the expiring of the said
 ‘ years of tutory, I made choice of the said
 ‘ ----- to be curators to me, with power
 ‘ to them, or any two of them, the said C.
 ‘ or my mother being one, to exerce the fore-
 ‘ said office during my minority, as the act of
 ‘ curatory bears: *As also* the said C. and the
 ‘ said ----- my mother, had the only intro-
 ‘ mission with my estate, and took particular
 ‘ care of the management of my affairs, from
 ‘ the time of their being elected curators to
 ‘ me, &c.’

The subsumption and discharge does not much differ from that in a discharge of tutory, except in this ----- ‘ And seeing that now,
 ‘ after my full and perfect age of 21 years
 ‘ complete, the said ----- has given in to me
 ‘ the accompts of his intrómissions, &c. *there-*
 ‘ *fore wit ye me*, now after my full and per-
 ‘ fect age of 21 years complete, to have exo-
 ‘ nered, &c.’

In the rest of the clauses of the discharge, in place of *tutors*, you write *curators*, or put both *tutors and curators*, or *factor*, according to the circumstances of the parties.

Of DISCHARGES granted by a Constituent to his Factor.

THe stile of such discharges may be known from what is above set down; however, for example, take this following.—
 ‘ Be it known, &c. me *A. Forasmuchas* I
 ‘ did, upon — grant a factory to *B.* to up-
 ‘ lift the sums of money, *viz.* (*Here narrate*
 ‘ *the sums, the ground of debt, and the debi-*
 ‘ *tor’s name, in a brief way*) as the said fac-
 ‘ tory registred, &c. more fully proports: *As*
 ‘ *also* the said *B.* by his receipt of the date of
 ‘ the foresaid factory, doth acknowledge that
 ‘ he had in his custody the said three bonds
 ‘ belonging to me, with — of money, and
 ‘ that he was to lend out the money, (and
 ‘ what annualrents he should recover of these
 ‘ sums) upon bond to be taken to myself, as
 ‘ the said receipt bears; *and likewise* the said
 ‘ *B.* having uplifted the foresaid sum of —
 ‘ which was due by *C.* with the annualrent
 ‘ thereof, from *Whitsunday* 1757. to *Whit-*
 ‘ *sunday* 1764. he did employ and lend out
 ‘ the same to the deceast *F.* and took a bond
 ‘ therefor by him and *G.* &c. having made up
 ‘ the same to the sum of — and for which
 ‘ he likewise received a bond of corrobor-
 ‘ tion by *H.* dated — *As also* the said *B.*
 ‘ having, upon — received from *I.* in my

' name, the sum of 1000 *merks* money fore-
 ' said, which he did then lend out to *K.* up-
 ' on bond and security given by him and his
 ' son, being, with the annualrents thereof,
 ' made up to 1200 *merks* at the term; and
 ' likewise the said *B.* by his missive letter,
 ' dated — doth acknowledge that he had
 ' received 1000 *lib.* of mine from *L.* and
 ' whereby he promisseth an account how he
 ' has disposed upon it; and accordingly ha-
 ' ving uplifted the 600 *lib.* that was due by
 ' *F.* and — he employed the same, and an-
 ' nualrents thereof, and the said 1000 *lib.* up-
 ' on a bond granted by the said *F.* as princi-
 ' pal, and — as cautioner, to me, of the
 ' date — bearing interest from *Whitsunday*
 ' in that year; and in like manner the said *B.*
 ' having pursued *N.* as heir to the said *D.* for
 ' the sum above specified due by him, he did
 ' upon — obtain a decret before the
 ' Lords of council and session, against the said
 ' *N.* for the same, and upon — he procu-
 ' red from *N.* a bond of corroboration, where-
 ' by the annualrents resting at *Candlemas*
 ' 1757. were accumulated to a principal sum,
 ' and in which — is also cautioner, in man-
 ' ner therein expressed: And now, seeing the
 ' said *B.* hath given up to me the foresaid
 ' bonds granted by — for the 2400 *lib.*
 ' with the original granted by *D.* and decret
 ' obtained against *N.* and the registred bond
 ' of corroboration thereof, granted by him
 ' and

and ——— for 1793 *lib.* and letters of horn-
 ing, inhibition and adjudication upon the said
 bond of corroboration; *as also* a bond by
 the said *F.* as principal, and ——— as caution-
 er, for 1876 *lib.* and a bond by ——— for
 1200 *merks*, with an assignation granted for
 farther security of that debt by ——— with
 all which I hold me well contented and ful-
 ly satisfied; *therefore wit ye me* to have exo-
 nered, quit-claimed, and simply discharged,
likeas I, &c. the said *B.* his heirs and exe-
 cutors, of the factory above mentioned, and
 of the missive letters, receipts and obligation
 above specified, and of the whole sums of
 money contained therein, in so far as he was
 liable to me therefor, and of all action and
 execution competent, or that may be com-
 petent to me against him thereanent, *which*
discharge I bind and oblige me, my heirs
 and executors, to warrant to be to the said
B. and his forefairs, a sufficient exoneration
 concerning the premisses, at all hands, and
 against all deadly; and I do hereby ratify
 the discharge granted by him to ——— son
 and heir to the deceased *C.* of the sum above
 specified that was due by his father.'

Of DISCHARGES of depending Processes and Decreets.

IN discharges of depending actions you briefly narrate the summons, and all that has followed thereon, as the interlocutors of court, if any be, and subsume, 'That the defender has satisfied the claim, or the like, expressing the true matter of fact, or in general thus: 'And now seeing, for certain onerous causes and considerations, it is agreed that I should (or I am content to) grant the discharge under written, *therefore, &c.*'

But all this will be better illustrated by the following discharge of a decreet: — 'Be it known, &c. me *A. Forasmuch as B. having an action and cause of spulzie depending before the Lords of council and session, against umquhile D. for the wrongous, violent and masterful spoliation from him of the goods and gear underwritten, upon the which dependence the said B. raised letters of inhibition against the said umquhile D. which were duly and lawfully executed at his instance, upon the — day of ——— &c. years, the said B. thereafter made and constituted me, the said A. his cessioner and assign, in and to the said action, which was then depending before the said Lords, with all that might result and follow*

follow thereupon, and transferred his right
 thereof into my person, and surrogated me
 in his place thereof, as the said assignation,
 of the date, &c. at more length bears,
 and, by reason the said action was intended,
 before the date of the said assignation, at the
 cedent's instance, I insisted in pursuait there-
 of, and obtained decret of spulzie therein,
 against the said umquhile D. decerning her
 to have done wrong, in the wrongous,
 violent and masterful spulzieing from the
 said, &c. cedent, in the month, the, &c.
 price, &c. of, &c. *And therefore*, decerning
 the said umquhile D. to restore and deli-
 ver the said goods and gear, or else the a-
 vails and prices of the same *respective* afore-
 said; and also to make payment to the said,
 &c. of the sum of, &c. of expences, as
 the said decret at more length bears;
 whereof she made no payment at any time
 before her decease: And therefore I, the
 said, &c. assigney above named, intended
 action before the said Lords of council
 and session, against ----- as universal intro-
 mitters with the goods and gear of the said
 umquhile, &c. since her decease; and up-
 on the ----- day of ----- I ob-
 tained decret before the Lords of council
 and session against them, decerning them to
 content, pay and deliver to me, as assigney
 foresaid, the goods, gear, and others above
 written, or the avails and estimation there-
 of,

'of, as the prices contained in the said de-
 'cree, and to make payment to me of the
 'said expences, as the said last decreet at
 'more length bears: Upon the which de-
 'cree I raised letters, &c. and, by virtue
 'thereof, caused charge, &c. the said, &c.
 'Likeas the said ----- for their con-
 'tempt and disobedience, were, upon the
 '----- day of ----- orderly de-
 'nounced, &c. as in the letters of horning,
 'execution and denunciation, at more length
 'is contained: *And now*, because the said
 '----- for obedience of the said de-
 'creets and letters, and in satisfaction there-
 'of, has presently made and granted to me
 'an obligation containing the sum of -----
 'money of this realm, viz. the one half there-
 'of to be paid to me, my heirs and assignies,
 'betwixt the date of thir presents, and, &c.
 'Therefore. &c.'

So there is in effect no difference but in
 the narration of the ground of debt, for a
 decreet in order to a discharge may be va-
 riously narrated, and more briefly than in the
 preceeding example, thus: ----- 'Be
 'it known, &c. us ----- *Forasmuchas*,
 'upon the ----- day of ----- last bypast,
 'we obtained a decreet before the Lords of
 'council and session, against -----
 'and certain other persons therein contained,
 'decerning and ordaining them to warrant,
 'free, relieve, and skaithless keep us, and
 'each

each of us, our heirs and executors, of a
 duty of ----- merk Scots money, -----
 of expences for ilk term's failzie, and of all
 cost, skaith, damages and expences which
 we have sustained, or shall sustain or incur
 therethrough, and for not reporting and de-
 livering to us sufficient acquittances and dis-
 charges thereupon, for our better relief
 thereanent; *and also*, to make payment to
 us of the sum of ----- for the charges
 and expences already sustained by us, con-
 form to the said decret, for the reasons
 and causes therein contained, as the same,
 of the date foresaid, at more length bears,
whereupon we raised letters of horning, and,
 by virtue thereof, caused charge and do-
 nounce the said ----- to the horn, for not
 observing, keeping, and fulfilling to us of
 the said decret. conform thereto: *As also*,
 we have caused take, apprehend and incar-
 cerate the said, &c. within the tolbooth of
 ----- where he presently remains,
 ay and while he fulfil to us the said decret,
 in all and fundry the heads and points there-
 of above written, conform thereto. *And*
now, forasmuchas, for obedience of the said
 decret, letters and charges raised there-
 upon, the said ----- has made payment to
 the said ----- of ----- money foresaid, con-
 tained in the said decret, and has purcha-
 sed and delivered to us a sufficient acquit-
 tance and discharge from the said ----- and

" of the said penalty of — money for each
 " term's failzie ; *as also*, has satisfied and con-
 " tented me the said — of the said sum
 " of — of expences and charges sustain-
 " ed by me in manner foresaid, of the which
 " charges and sums of money we grant the
 " receipt, and hold us well contented and
 " satisfied : *Therefore, wit ye us* to have exo-
 " nered, quit-claimed and simply discharged,
 " and by the tenor hereof, all with one con-
 " sent and assent, we exoner, &c. the said
 " — — — — and all other persons above
 " mentioned contained in the said decret,
 " and each of them, their heirs, executors,
 " assignies, and all others whom it effeirs, of
 " the said decret, and of all letters of horn-
 " ing, poinding, inhibition, arrestment, cap-
 " tion, and others raised thereupon, with the
 " executions thereof, and all that has follow-
 " ed, or that may follow upon the same. And
 " we grant the said decret, and all that has
 " followed, or may follow thereupon, to be
 " duly satisfied, kept and fulfilled by the said
 " persons to us, conform thereto in all points ;
 " *likeas*, we have instantly delivered to the
 " persons above named the said decret, with
 " the letters of horning, poinding, inhibiti-
 " on, arrestment, and caption raised there-
 " upon, with their executions, to be cancel-
 " led and destroyed by them for ever, or o-
 " therways used by them at their pleasure.
 " *Which discharge* above written, we bind and
 " oblige

“oblige us to warrant to them at all hands,
 &c.”

*A DISCHARGE of an Advocation of a
 Service.*

“**I** *A.* with consent of ——— for certain good
 causes, &c. moving us, by these pre-
 sents, discharge the advocation, and charge
 following thereupon, raised at our instance
 against ——— whereby the brievés and ser-
 vice of the said ——— as heirs to umquhile
 ——— was, by the said letters of advocation
 stayed, and the sheriff of ——— and his de-
 putes, discharged of all farther proceeding;
 and, by these presents, we consent, and are
 content that the said ——— be served and
 retoured heirs to umquhile ——— and
 that these presents shall be a sufficient war-
 rant to the said sheriff of ——— and his de-
 putes, to proceed in the service of the said
 ——— brievés, as heirs foresaid, notwith-
 standing of any advocation raised by us, or
 any other impediment whatsoever that can
 be alledged or proponed by us in the con-
 trary, by these presents, &c.” Registration.

When one purchases a land-estate, against
 which real diligence has been used, which is
 paid by the price, and the purchaser inclines
 to keep still the said diligence, and, for his bet-
 ter security, makes use both of it and the vo-
 luntary

Voluntary right; in which case it is just that the debtor's person, and his other estate, moveable or immoveable, be made free. Which discharge is in this form.

Be it known, &c. me *A.* (*Here narrate the ground of debt, and writs to be discharged, with the rights thereto*) And now, for certain causes and considerations moving me, *wit ye me* to have exonerated, quit-claimed, and simply discharged, *likeas*, &c. the said *B.* his heirs and executors, of all real and personal execution that may be used against him as heir, or apparent heir to the deceast ——— or against the lands and estate, heritable or moveable, pertaining, or that shall pertain to the said *B.* for the debts and sums of money particularly above mentioned, contained in the foresaid comprising, and grounds thereof, without prejudice nevertheless of the said comprising, in so far as the same may affect the lands, teinds, coal-heughs, salt-pans, and others above specified, apprised thereby, and without prejudice to me of my right to the said lands by virtue of the same comprising. *And farther*, I, by these presents, exoner, quit-claim, and simply discharge the said *B.* his heirs and executors, of all real and personal execution that may be used against them, their lands and estate, personal or real, for payment of the foresaid sum of ——— with the annualrent thereof, and liquidate expences

' pences contained in the bond of provision
 ' above specified, granted by him to me.
 ' *And I do hereby declare*, that the said *B.* his
 ' heirs, executors, and other representatives,
 ' are hereby, and shall be fully liberated,
 ' freed and discharged of all execution compe-
 ' tent, or that may be competent to be used
 ' for the sums before mentioned, contained in
 ' the foresaid comprising and bond of provisi-
 ' on, against them, their means or estates, he-
 ' ritable or moveable, or any part or portion
 ' thereof, by whatsoever manner of way; and
 ' that I shall not trouble, molest, nor distress
 ' them thereanent, nor prejudice them therein
 ' any way whatsoever, and that I shall only
 ' make use of the debts specified in the fore-
 ' said comprising and bond of provision, for
 ' affecting the said lands of ——— coal-heughs,
 ' salt-pans, teinds and pertinents thereof: *And*
 ' *therefore* it is also declared, that, notwith-
 ' standing of this discharge, it shall be leifom,
 ' without prejudice to me, to comprife or ad-
 ' judge from the said *B.* as charged to enter
 ' heir in special to the said ——— the said
 ' lands of ——— and others contained in the
 ' foresaid apprising, for the sums contained in
 ' the foresaid bond, and to affect the said lands
 ' therewith, and the said debts hereby dis-
 ' charged are to have no farther force, vali-
 ' dity nor effect, nor are to be made use of
 ' by me, or my foresaids, but allenary for af-
 ' fecting the said lands of ——— and others
 S ' specified

‘ specified in the said apprising formerly led at
 ‘ my instance, and no farther.’

‘ In another form thus ; — ‘ And see-
 ‘ ing the whole principal sums above menti-
 ‘ oned were allowed by the said *B.* and *C.* to
 ‘ *D.* and *E.* in the first end of the price of the
 ‘ half of the lands of — which were dis-
 ‘ posed irredeemably to them by the said *B.*
 ‘ and *C.* and their creditors, in manner men-
 ‘ tioned in the two several dispositions made
 ‘ thereanent, both dated -- --- whereupon it
 ‘ was conditioned, that the said *D.* and *E.*
 ‘ should procure to the said *B.* and *C.* and
 ‘ their constituents above named, a discharge
 ‘ of all action, both personal and real, compe-
 ‘ tent against them and their estate, heritable
 ‘ and moveable, by virtue of that wadset-
 ‘ right, heritable bonds and infestments above
 ‘ mentioned, except in so far as the same
 ‘ might militate for their farther security and
 ‘ possession of the lands and others disposed
 ‘ to them by the said *B.* and *C.* *And also see-*
 ‘ *ing* the said *D.* and *E.* by their two several
 ‘ dispositions of the date, &c. have disposed,
 ‘ in favours of me and my forefaids, their re-
 ‘ spective halves of the half of the foresaid
 ‘ lands of — and have likeways procured
 ‘ the dispositions and assignations of the sever-
 ‘ al heritable rights above rehearsed to be
 ‘ granted in my favours, upon condition that
 ‘ I should grant this present discharge in the
 ‘ terms

' terms after specified, for fulfilling of the ob-
 ' ligement made by them to the said C. there-
 ' anent; *therefore wit ye me*, as having right
 ' in manner above written, to have exonered,
 ' quit-claimed, and simply discharged, *likeas*
 ' I, by these presents, exoner, &c. the said
 ' B. and C. their heirs and executors, and al-
 ' so the heirs and executors, and other repre-
 ' sentatives of the said umquhile J. and all o-
 ' thers whom it effeirs, of all personal execu-
 ' tion competent, or that may be competent
 ' to me, my heirs, executors or assignies, a-
 ' gainst them, or any of them, or their fore-
 ' saids, upon the bonds above mentioned,
 ' granted to the said P. and J. and bond of
 ' corroboration thereof, and sikklike upon the
 ' two bonds above rehearsed granted to the
 ' said D. and his spouse, and also upon the
 ' contract above specified, past betwixt the
 ' said J. and the said umquhile J. and C. or
 ' upon any of the said rights, for the sums
 ' of money, principals, annualrent and expen-
 ' ces *respective* above written, therein contain-
 ' ed, or any part thereof. *And also* of all
 ' real execution competent, or that may be
 ' competent to me or my foresaids therefor,
 ' against any of the said debtors, their lands
 ' and estate presently appertaining, or which
 ' shall happen to pertain to them, or any of
 ' them, excepting allenary the half of the
 ' said lands of ——— with the pertinents, dis-
 ' poned

poned by the said *J.* and *C.* to the said *D.* and *E.* and by them to me, as is above mentioned; for farther security whereof, it shall be leifome to me and my foresaids, notwithstanding of this present discharge, to apprise or adjudge the same upon the said bonds and contract, and to use what farther execution shall be necessary in order thereunto. *Which discharge* above written, according to the quality above specified, I bind and oblige me, my heirs and successors, to warrant, &c.’

Sometimes it happens that cautioners, or others who have corroborated the original bonds, are discharged, and yet all competent execution against the principal is reserved by the creditor. The which discharge may be in this, or the like stile: — ‘ And seeing, when the said *H.* did assign to me the foresaid bond of relief granted by the said ——— and decreet of suspension following thereon against the said ——— and his cautioner, and to the annualrents above mentioned, which the said *H.* had paid, I did then undertake and oblige myself to procure from the said *E.* a valid assignation and right to the foresaid bond, granted to her and her said mother, by the said *M.* and cautioners above named, of the said sum of 7000 merks, and of the infestments of annualrent foresaid following thereupon, and of the said annualrent from and after the
‘ term

' term of *Candlemas* 1757. and of the prin-
 ' cipal sum above specified, whereupon the
 ' said annualrent is redeemable; and having
 ' obtained the said assignation, and right there-
 ' to, I obliged myself to discharge the said
 ' *H.* and the said *W.* and also the representa-
 ' tives of the said umquhile *M.* of the bonds
 ' above specified, and sums contained therein
 ' in manner after mentioned, without preju-
 ' dice to me of the said infestment of annual-
 ' rent out of the lands foresaid, as is after ex-
 ' pressed. *And in respect* that I have now ac-
 ' quired the said assignation and disposition, as
 ' is above narrated, *therefore wit ye me*, as ha-
 ' ving right in manner foresaid, to have exo-
 ' nered, &c. *likens*, &c. the said *B.* cautioner
 ' above named in the foresaid suspension, his
 ' heirs and executors, of all execution, real or
 ' personal, that is, or may be used against him
 ' upon the bond of cautionry above specified,
 ' and decret of suspension foresaid following
 ' thereupon, and of the same bond and de-
 ' creet, sums of money, principal, annualrents
 ' and penalty above specified, contained in the
 ' said bond granted by the said deceased *M.* and
 ' his cautioners to the said *E.* and *F.* and their
 ' forefairs; and in the said bond granted by
 ' the said *W.* for payment of the sums above
 ' written, to the said *E.* and *F.* and their fore-
 ' fairs; and in the said bond of cautionry in the
 ' suspension foresaid, raised by the said —

' whereby the said *B.* as cautioner for the said
 ' *W.* is obliged to have made payment to the
 ' said *E.* and her said mother, of the sums of
 ' money above written, contained in the bond
 ' granted to them by the said *M.* and his cau-
 ' tioners, and of the foresaid penalty of 1000
 ' merks specified in the bond of relief grant-
 ' ed by the said *W.* thereanent, after the dis-
 ' cussing of the suspension above specified,
 ' whole tenors and contents thereof, and of
 ' all letters of horning and inhibition, if any
 ' be raised and executed thereupon against
 ' him, and of all other diligence that has fol-
 ' lowed, or may follow upon the same, for
 ' now and ever. *Which discharge above writ-*
 ' *ten I bind and oblige me to warrant to be a*
 ' *sufficient exoneration to the said B. concern-*
 ' *ing the premisses, at all hands, &c. And I*
 ' *bind and oblige me to warrant and relieve*
 ' *him, and his foresaids, of all costs, skaith,*
 ' *damage, expences or interest, that they shall*
 ' *happen to sustain, or incur through the*
 ' *said bond of cautionry, or by the said B.*
 ' *his becoming bound and obliged therein as*
 ' *cautioner for the said W. in manner foresaid,*
 ' *in any sort, without prejudice to me of the*
 ' *said infeftment of annualrent out of the lands*
 ' *above expressed, ay and while I get payment*
 ' *of the sums of money, principal and an-*
 ' *annualrents (whereunto I have right) from the*
 ' *said W. heritor of the said lands, out of*
 ' *which the same is appointed to be uplifted,*
 ' and

‘and who is obliged to pay the same by the
 ‘bond above written, and to relieve the said
 ‘B. of his cautionry, conform to the clause
 ‘of relief therein mentioned, but noways to
 ‘use execution for the same against the said
 ‘D. as said is.’

*A DISCHARGE of a Bond of Interdicti-
 on.*

THo’ bonds of interdiction are perpetual,
 and last so long as the interdictors, or
 a *quorum* of them, with the party interdicted,
 live, yet he may come to better understand-
 ing, and more sober manners, and be fit for
 managing his own affairs: In which case the
 bond may be discharged, which is done in this
 form; — ‘Be it known, &c. us A. B. C.
 ‘Forasmuchas, (*Here narrate the bond of in-*
 ‘*terdiction, and then subsume*) And we confi-
 ‘dering that the said D. is of considerable age,
 ‘and that he hath sufficient knowledge, ca-
 ‘pacity and experience, for right administra-
 ‘tion, management, government, and order-
 ‘ing of his own affairs, and that there is now
 ‘no use of the foresaid interdiction, but that
 ‘it is just and reasonable that he be liberated,
 ‘freed, and loosed therefrom, that he may
 ‘administrate, govern, and order his own af-
 ‘fairs by himself at his pleasure, without our
 ‘consent had thereto; *therefore, wit ye us, the*
 ‘said

' said *A. B.* and *C.* the only persons now on
 ' life of the said five interdictors, all with one
 ' consent, to have exonerated, quit-claimed,
 ' and *simpliciter* discharged, as we by these
 ' presents exoner, &c. the bond of interdiction
 ' above mentioned, granted by the said
 ' *D.* to us, letters of publication and registra-
 ' tion thereof, and all that may follow there-
 ' upon. And we all, with one consent and
 ' assent, do hereby liberate and loose the said
 ' *D.* from the same, and we are content, and
 ' do hereby consent, that the said *D.* by him-
 ' self alone, without consent of us, or either
 ' of us, may freely grant bonds, obligations,
 ' &c. (as in the bond of interdiction) sikelike,
 ' and as freely, &c. as he did, and might have
 ' done, &c.'

But if the interdiction was judicial, a dis-
 charge by the interdictors is not sufficient;
 the only means to remove such is by process
 of declarator; *nam nihil tam naturale est quam*
unumquodque eodem modo dissolvi quo colligatum
est.

Not only claims and rights, which are con-
 stituted and liquid, can be discharged, but also
 those whereunto our right is only in appear-
 ance, and *in spe*; such are, renunciations to be
 heir, and discharges of all that one can ask or
 claim by and through the decease of a nearest
 in kin, parent, brother, or other blood friend.

A renunciation to be heir is in this stile;
 ' Be it known, &c. me *A.* eldest lawful son
 ' and

' and apparent heir to the deceast ——— my
 ' father, *forasmuch* as there were letters pur-
 ' chased, and charges executed against me, at
 ' the instance of *B.* charging me to enter heir
 ' to my said deceast father within forty days,
 ' conform to the act of parliament, to the
 ' effect that he may intent and pursue all ac-
 ' tions and causes competent to him, for him-
 ' self, and as assigney constituted by divers and
 ' sundry persons against me as heir to my
 ' said deceast father, with certification to me,
 ' if I failed therein, the said forty days being
 ' bypast, that the said *B.* shall have such like
 ' process, action and execution against me, as
 ' if I were entered, served and retoured heir
 ' to my said deceast father, notwithstanding
 ' that I, in manifest defraud of him there-
 ' anent, wrongously ly forth, and will not en-
 ' ter, as said is, as the said letters, and sum-
 ' mons raised thereupon, and executions there-
 ' of, at more length proport. *And seeing* I
 ' am resolved not to enter heir to my said de-
 ' ceast father, in respect I may incur great
 ' skaith therethrough; *therefore, wit ye me* to
 ' have renounced; *likeas* I, by these presents,
 ' renounce to enter heir to my said deceast
 ' father, and I quit all benefit competent, or
 ' that may be competent to me as heir to him,
 ' and I am content, and by these presents con-
 ' sent, that the foresaid *B.* for himself, or as
 ' assigney foresaid, have action and execution
 ' for all debts resting by my said deceast fa-
 ' ther

“ther to him, for himself, or as assigney fore-
 “ said, *contra hereditatem jacentem et bona mo-*
 “ *bilis* pertaining to my said deceast father,
 “ the time of his decease, as accords of the
 “ law.” Registration, *ad futuram rei memo-*
riam.

Discharges of all that one can ask through
 the decease of a parent, are seldom or never
 in writs separate, but more frequently con-
 joined to others, as contracts of marriage, to
 which we refer them.

Thus much concerning discharges of per-
 sonal claims, and of moveable rights. We
 come now to treat of discharges or renun-
 ciations of real and heritable rights, as of in-
 festments of annualrent, of wadsets, appri-
 sings, or adjudications, or of the reversions
 competent to the wadsetter or debtor in the
 comprising, and also of liferent rights, &c.

A DISCHARGE and RENUNCIATION
of an Infestment of Annualrent, by the
principal Creditor, to the original De-
bitor.

“ **B**E it known, &c. me *A. Forasmuchas B.*
 “ and *C.* by their bond, &c. (*Here nar-*
 “ *rate the bond and the requisition mentioned in*
 “ *the said bond*) and there being only 40000
 “ merks required at one term, with the sum of
 “ 4000

4000 l. money foresaid of liquidate expen-
 ces for each term's failzie, together also
 with the annualrent and profit of the said
 whole principal sum, yearly and termly, at
 Candlemas and Lammas, by equal portions,
 beginning the first term's payment thereof
 at Lammas then next to come, now last by-
 past, for the half year preceeding that term,
 and so forth termly thereafter, at the terms
 above specified by equal portions, during
 the not-payment of the said principal sum,
 with the sum of two hundred pounds mo-
 ney foresaid of liquidate expences, for each
 term's failzie, through the not-payment of
 the said annualrent *toties quoties*. And, for
 farther security thereanent, the said B. and
 C. bound and obliged them, conjunctly and
 severally, and their forefairs, duly and law-
 fully to infest and seize me in liferent, and
 ——— which failing, &c. heritably and ir-
 redeemably, under reversion always in man-
 ner after specified, and under the reserva-
 tions, provisions, and conditions after men-
 tioned, in all and whole an annualrent of
 4000 merks money foresaid yearly, to be
 uplifted at Candlemas and Lammas, by e-
 qual portions, forth of the lands and baro-
 ny of L. &c. or forth of any part, &c. and
 that by two severall infestments to be holden,
 and with absolute warrandice, in manner
 mentioned in the said bond, whereby the
 said annualrent is provided to be redeem-
 able

' able by the said B. and C. their heirs or af-
 ' signies, by real payment making, &c. in
 ' manner, and upon the premonition speci-
 ' fied in the foresaid bond, whereby there is
 ' reserved always to me the said A. at any
 ' time of my life, &c. Conform where-
 ' unto, and precept of fasine, &c. *Likeas*
 ' the said B. having caused premonish me to
 ' receive, at *Lammas* last, 80000 merks, with
 ' a term's annualrent thereof, from the
 ' *Candlemas* preceeding that term; and *hath*
 ' accordingly, at the said term of *Lammas*
 ' last bypast, made payment to me of the fore-
 ' said sum, with 2000 merks for the annual-
 ' rent thereof from *Candemas* to *Lammas*
 ' in this instant year 1764, whereof I grant
 ' the receipt, renouncing all exceptions, &c.
 ' *Therefore, wit ye me*, as having power by the
 ' exprefs quality of the bond above written,
 ' to have granted and confessed, *likeas* I, &c.
 ' the said annualrent of 4000 merks, corre-
 ' spondent to the said sum of 80000 merks,
 ' now presently paid, to be duly and lawfully
 ' redeemed from me, and my said son, by the
 ' said B. and C. *And*, in testimony thereof I,
 ' as having power in manner above written,
 ' do hereby *not only* exoner, quit-claim, and
 ' simply discharge them, their heirs and exe-
 ' cutors of the said sum of 80000 merks, and
 ' of the annualrent of the said sum, from
 ' *Candlemas* last in this present year 1764, and
 ' of the termly failzies and liquidate expences
 ' effeiring

' effecting thereto, and of the said bond itself,
 ' and of the instrument of sasine following
 ' thereupon: *But also* I, as having power in
 ' manner above written, by these presents, re-
 ' nounce, quit-claim, and simply over-give,
 ' from me and my said son, our heirs and as-
 ' signies, to and in favour of the said *B.* and
 ' *C.* and their heirs and assignies whatsoever,
 ' the foresaid annualrent of 4000 merks, cor-
 ' respondent to the said sum of 80,000 merks,
 ' with the bond and infestment above specifi-
 ' ed following thereupon, and whole oblige-
 ' ments thereof, conceived in favour of me
 ' and my said son. And that I may be fully
 ' denuded of the said annualrent, I, by these
 ' presents, make and constitute — procurators,
 ' to *resign, &c. likeas* I, as having power
 ' in manner above expressed, do hereby resign,
 ' &c. all and whole the foresaid annualrent
 ' of 4000 merks, contained in the foresaid
 ' bond and sasine, with the bond and sasine
 ' themselves, *in the hands*, and *in favour* of
 ' the said *B.* and *C.* their heirs or assignies,
 ' my immediate superiors thereof, *ad perpetu-*
 ' *am remanentiam*, to the effect that my right
 ' of property of the said annualrent, hereby
 ' renounced and resigned, being consolidated
 ' with the said *B.* and *C.* their right of superi-
 ' ority thereto, all and whole the foresaid
 ' lands and barony of *L.* with the pertinents,
 ' lying and comprehending, as said is, may re-
 ' main and abide with, and be bruiked and
 ' posses-

T

‘ possessed, by them and their forefaids, as
 ‘ free of the burden of the annualrent here
 ‘ renounced, as if the same had never been
 ‘ granted; *and* thereupon to take instruments,
 ‘ which I promise to ratify. *Which discharge,*
 ‘ resignation and renunciation above written,
 ‘ I bind and oblige me, my heirs, successors
 ‘ and executors, to warrant to the said B. and
 ‘ C. and their forefaids, at all hands, and a-
 ‘ gainst all deadly. *Consenting to the registra-*
 ‘ *tion* hereof in the books of council and ses-
 ‘ sion, general or particular register of sales,
 ‘ renunciations, &c. or books of any other
 ‘ judicatory competent, &c. *ad futuram rei*
 ‘ *memoriam*; and, if need be, &c.’

If the heritable bond was in favour of a man and his wife in liferent, and to his eldest son *nominatim* in fee, containing a faculty to the father to uplift the money and give discharges, this faculty is narrated with the bond, and in the clause of discharge you say, ‘ *There-*
 ‘ *fore wit ye me*, as having power by express
 ‘ quality of the bond above written, to have
 ‘ granted and confessed, &c. *but also* I, as ha-
 ‘ ving power in manner above written, by
 ‘ these presents, renounce, &c.’ And so forth in the other clauses.

If the lands out of which this annualrent was upliftable be sold to another, in that case the renunciation must be in favour of the purchaser, as well as of the original debtor, and resignation *ad remanentiam* must be made in
 his

his hands, thus; — ‘ By these presents,
 ‘ renounce, quit-claim, &c. to and in favour
 ‘ of the said B. (*the debtor*) and C. who has
 ‘ now acquired right to the lands, and others
 ‘ above and after specified, out of which the
 ‘ said annualrent is to be uplifted, their heirs
 ‘ and assignies whatsoever, &c.’ And in the
 resignation, thus; — ‘ In the hands, and
 ‘ in favour of the said B. (*the debtor*) his
 ‘ heirs or assignies, my immediate superiors
 ‘ thereof, *ad perpetuam remanentiam*; and in
 ‘ case the said C. (*the purchaser*) be infest in
 ‘ the foresaid lands and superiority of the
 ‘ foresaid annualrent, then in the hands and in
 ‘ favour of the said C. his heirs or assignies,
 ‘ my immediate superiors thereof for the time,
 ‘ *ad perpetuam remanentiam*, to the effect that
 ‘ the right of property of the foresaid annu-
 ‘ alrent, being consolidated with the said B.
 ‘ and C. *respective* for the time, their right of
 ‘ superiority, all and whole the foresaid lands,
 ‘ &c.’

In case the half of the principal sum be
 paid, the discharge and renunciation must on-
 ly be of the half of the annualrent: The he-
 ritable bond, infestment and premonition, if
 any be made, being narrated in common form,
 the grant of redemption is thus; — ‘ Con-
 ‘ fess the equal half of the said annualrent of
 ‘ 4000 merks, correspondent to the said sum
 ‘ of 40,000 merks, now presently paid, to be
 ‘ duly and lawfully redeemed, &c. — dis-
 T 2 charge

‘ charge of the said sum of 40,000 merks, as
 ‘ a part of the said sum of 80,000 merks, and
 ‘ of the annualrent of the said sum of 40,000
 ‘ merks, from *Candlemas* to *Lammas* in this
 ‘ present year 1764. and of a proportional
 ‘ part of the termly failzies and liquidate ex-
 ‘ pences effeiring thereto, and of the said bond
 ‘ itself, and of the instrument of sasine fol-
 ‘ lowing thereupon, in so far only as can be
 ‘ extended to the sums hereby discharged; so
 ‘ that the same bond and sasine is, from this
 ‘ time forth, to be restricted to, and to stand
 ‘ only for 40,000 merks of principal sum, and
 ‘ an annualrent of 2000 merks yearly, and the
 ‘ proportional part of the expences and term-
 ‘ ly failzies effeiring thereto; *but also* I, by
 ‘ these presents, renounce, &c. from me, &c.
 ‘ the foresaid annualrent,’ as in the preceeding
 stile of discharge and renunciation.

A grant of redemption, discharge and re-
 nunciation of a wadset, granted by a factor,
 the lands being holden of the wadsetter’s su-
 perior, is in this form; — ‘ Be it known,
 ‘ &c. me *A.* factor and commissioner specially
 ‘ constituted by *B.* for uplifting and receiving
 ‘ all and whatsoever sums of money, both
 ‘ principal, annualrents, and back-tack-duties
 ‘ resting unpaid, or that should be resting to
 ‘ the said *B.* by bonds, or by contracts of
 ‘ wadset, decreets, or otherways, by whatso-
 ‘ ever person or persons, and specially, with-
 ‘ out.

out prejudice to the generality foresaid, of
 the sum of — due by C. and, upon re-
 ceiving payment, to grant discharges and re-
 nunciations, one or more, and such other
 writs as should be requisite, and to oblige
 him and his successors in absolute warrandice
 thereof, conform to the factory and commis-
 sion granted by B. to me, of the date regi-
 stred — *Forasmuchas, (Here was narra-
 ted a contract of wadset in common form)*
And seeing the said C. hath made payment to
 me, by order from, and in name and behalf
 of the said B. of the sum of — as a part
 of the said sum, and of the annualrents or
 back-tack-duties of the said whole sum, ex-
 tending to — from *Martinmas* 1763. to
Whitsunday last in this instant year 1764.
 the back-tack-duties preceeding *Martinmas*
 last being paid then and before to the said B.
 himself, conform to his discharges given
 thereof; and which sum of — as principal,
 and — as back-tack-duties, I have applied
 and employed to the use and behoof of the
 said B. and for doing his necessary affairs;
therefore wit ye me, as factor and commissio-
 ner foresaid, and as having power in manner
 above mentioned, to have granted and con-
 fessed, *as I*, by these presents, grant and con-
 fess the lands, barony, and other annualrent-
 wadset, as said is, in so far as concerns the
 said sum of — and by-run back-tack-
 T.3 duties

' duties till *Whitsunday* last in this instant year
 ' 1764. to be duly and lawfully redeemed from
 ' the said *B.* my constituent, by the said *C.*
 ' And, in testimony thereof, I do hereby not
 ' only exoner, quit-claim, and simply discharge
 ' the said *C.* his heirs and executors, of the
 ' sum of — as a part of the sum of —
 ' and of the whole annualrents of the said
 ' principal sum of — till *Whitsunday* last,
 ' and of — of the said back-tack-duty year-
 ' ly, effeiring to the sum now paid, in all time
 ' after *Whitsunday* last, and of a proportional
 ' part of the termly failzie effeiring thereto, and
 ' of the foresaid contract itself, and registration
 ' following thereupon, in so far only as may be
 ' extended to the sums hereby discharged, so
 ' that the same contract of wadset and back-
 ' tack-duty, and reversion, is, from this time
 ' forth, to be restricted, and to stand only for
 ' — of principal sum, and — of back-
 ' tack-duty yearly; but also I, as having pow-
 ' er in manner above expressed, do, by these
 ' presents, renounce, quit-claim, and simply o-
 ' ver-give, from the said *B.* my constituent,
 ' his heirs and assignies, to and in favour of
 ' the said *C.* his heirs of tailzie and provision
 ' succeeding to him in his lands and estate of
 ' — the lands, barony, and others above
 ' mentioned, following thereupon, and whole
 ' obligation thereof conceived in favours of
 ' the said *B.* and that alienarly in so far as

con-

‘ concerns the said sum of ——— and back-
 ‘ tack-duty hereby discharged, as said is.
 ‘ *And* that he may be fully denuded of the
 ‘ wadset, so far as concerns the sum now
 ‘ discharged, I, by these presents, as having
 ‘ power in manner above expressed, now, as
 ‘ if the said *B.* were already infest and seized
 ‘ in the lands and barony, and then as now,
 ‘ make and constitute ——— and every one
 ‘ of them, conjunctly and severally, his very
 ‘ lawful procurators for him, and me as his
 ‘ commissioner, and in our name, to resign,
 ‘ surrender, over-give and deliver, and I, as
 ‘ having power in manner above mentioned,
 ‘ do hereby resign, &c. all and whole the
 ‘ lands and barony, and others above rehear-
 ‘ sed, contained in the foresaid contract of
 ‘ wadset right, in so far as concerns the said
 ‘ sum of ——— *in the hands* of my said con-
 ‘ stituents, immediate lawful superiors there-
 ‘ of, presently being, or that shall happen to
 ‘ be for the time, or of his and their com-
 ‘ missioners having power to receive resigna-
 ‘ tions in his or their names, *in favour*, and
 ‘ for new infestment of the same, to be
 ‘ made and granted to the said *C.* and his heirs
 ‘ of tailzie and provision succeeding to him
 ‘ in his lands and estate of *D.* to the effect
 ‘ that the foresaid lands and barony of *J.*
 ‘ and others contained in the foresaid wadset,
 ‘ may be bruiked and possessed, by him and his
 ‘ forefairs, free of the burden of the said
 ‘ ——— now

— now paid and renounced, in all time
 coming, and thereupon to take instruments,
 and to do every thing needful thereanent,
 that I, or my said constituent, may do our-
 selves if we were present, and which I pro-
 mise to ratify: *Which discharge*, renuncia-
 tion and resignation above written, I, by vir-
 tue of the foresaid factory and commission,
 and power given to me thereby, bind and
 oblige the said B. his heirs and executors,
 to warrant to the said C. and his foresaids,
 at all hands, and against all deadly: *Likeas* I
 bind and oblige me, my heirs and execu-
 tors, to cause the said B. and his heirs, re-
 new this present discharge and renunciati-
 on, whenever we shall be desired for that
 effect, till the said C. and his foresaids be
 sufficiently secured thereanent. *Registrati-*
on in the books of council and session, ge-
 neral or particular register of renunciations,
 sasines, &c. or any other competent regi-
 ster within *Scotland*, therein to remain *ad*
futuram rei memoriam, and letters, if need
 be.

A creditor having adjudged the lands and
 estate belonging to the principal and cautio-
 ners, he, at the earnest desire of the prin-
 cipal, being to discharge one of the cautio-
 ners, and to renounce the benefit of the ap-
 prising, in so far as concerns his lands, the
 tenor of this discharge and renunciation is as
 follows.

Be

' Be it known, &c. me *A. Forasmuchas*
 ' (*Here narrate the bond and apprising, and o-*
 ' *ther diligence, with the decreet, assignation*
 ' *or translation made to the discharger*) And
 ' seeing I the said *A.* am so far satisfied with
 ' the security I have of the lands and estate
 ' which did belong to, and were comprised
 ' from *B.* principal debtor, and his other cau-
 ' tioners, for the said debt, that I do not in-
 ' tend to use any diligence for the same a-
 ' gainst *C.* or any of the representatives of the
 ' said deceased *C.* his father, but am willing to
 ' grant the discharge underwritten; *therefore,*
 ' wit ye me, at the desire, and with the special
 ' advice and consent of the said *B.* to have not
 ' only exonerated and discharged, as I, by these
 ' presents, with consent foresaid, exoner and
 ' discharge the said *C.* his heirs and executors,
 ' and all the representatives of the said de-
 ' ceased *C.* of all action and execution com-
 ' petent to me against them, by virtue of the
 ' bond above mentioned, granted to the said
 ' umquhile ——— or by virtue of the com-
 ' prising following thereupon, whereunto I
 ' have right in manner above written, for
 ' now and ever; *but also,* to have renounced,
 ' quit-claimed, and simply discharged and over-
 ' given, *as I,* by these presents, &c. all right
 ' and interest that I the said *A.* by virtue of
 ' the comprising above mentioned, and dis-
 ' position and other conveyances made to
 ' me of the same, have or can pretend to the
 ' lands.

' lands and others above rehearsed, or to any
 ' part thereof, which pertained to and were
 ' apprifed from the faid deceaft C. his heirs
 ' and fucceffors, for now and ever. *Which*
 ' *discharge* and renunciation, I the faid A.
 ' bind and oblige me, my heirs and execu-
 ' tors, to warrant from my own proper faet
 ' and deed allenarly, *to wit*, that I have not
 ' granted, and that I, nor my forefaids, fhall
 ' not grant any right or difpofition of the fore-
 ' faid apprifing and ground thereof, that may
 ' be hurtful or prejudicial hereto in any
 ' fort, *declaring*, nevertheless, that thefe pre-
 ' fents are granted by me without receiving
 ' of any money, or gratuity, or good deed, but
 ' freely and willingly, at the earneft defire
 ' and request of the faid B. and with his con-
 ' fent: *And farther*, it is hereby provided,
 ' that, in cafe thefe presents fhall be obruded
 ' againft me in any action purfued, or to be
 ' purfued, at the inftance of me, my heirs or
 ' affignies, againft the tenants or intromit-
 ' ters with the mails and duties of the other
 ' lands contained in the faid apprifing, and
 ' of the lands contained in another comprif-
 ' ing led for the fame fum, againft the faid B.
 ' the principal debtor, in any action purfu-
 ' ed, or to be purfued, againft his representa-
 ' tives, or the representatives of any other
 ' of the cautioners, then, and in that cafe,
 ' the fame fhall be null, and of none avail,
 ' force, ftrength, nor effect, as if it had never

been.

‘ been granted, and shall not militate against
 ‘ me, to hinder or stop any action or execu-
 ‘ tion against the representatives of the prin-
 ‘ cipal debtor, or the other cautioners, or
 ‘ against their means, lands, or estate: *But*
 ‘ that I may, notwithstanding hereof, still use
 ‘ diligence against them for their lands, and
 ‘ for recovering payment of the sums above
 ‘ mentioned, siklike, and as freely, in all re-
 ‘ spects, as if these presents had never been
 ‘ granted; upon which express provision this
 ‘ discharge is granted and accepted, and no
 ‘ otherways.’ Registration for preservation
 allenary.

One having acquired right by adjudication
 or disposition to some lands, or got disposi-
 tion of the like diligence for farther corro-
 boration of his rights, obtains a gift of the
 ward, non-entry, or the like casualties, of
 the whole lands and estate that belong to
 the proprietor from whom the lands were
 adjudged: These gifts do affect the whole
 estate, wherefore the proprietor, for certain
 onerous causes, obtains from the donatar,
 his creditor, a discharge of the same, in so
 far as concerns his estate not adjudged, and
 a declaration that they shall only be made use
 of for the better securing of the rights of the
 lands adjudged: Which discharge and decla-
 ration is in the form and stile under written.

‘ Be it known, &c. me *A. Forasmuchas,*
 ‘ (*Here the said rights, disposition and gifts were*
 ‘ nar-

‘ narrated in the common form, and then follows
 ‘ the cause and motive in this stile) And seeing
 ‘ it is not our intention to make use of the
 ‘ foresaid rights, but only for securing us,
 ‘ and our said son, in the lands and others a-
 ‘ bove mentioned, acquired by us from the
 ‘ said B. viz. (Here the whole lands to which the
 ‘ creditor had right, and were agreed should re-
 ‘ main with him, by virtue of his rights foresaid,
 ‘ were narrated) whereunto we have right
 ‘ by the several dispositions granted to us by
 ‘ the said B. with consent of the persons
 ‘ therein named: And that it is conditioned
 ‘ we should discharge action; both personal and
 ‘ real, competent to us against the said B.
 ‘ or any others who are bound, or may be
 ‘ liable for the debts above mentioned, and
 ‘ against their estate, both heritable and move-
 ‘ able, by virtue of the gifts of ward, non-
 ‘ entry, relief and marriage, and adjudicati-
 ‘ ons above mentioned, and to make no o-
 ‘ ther use thereof, but in so far as the same
 ‘ may operate for our farther security of the
 ‘ lands and others above rehearsed, disposed
 ‘ to us, and our said son, by — in manner
 ‘ above expressed; therefore, wit ye us, as ha-
 ‘ ving right in manner above written, to have
 ‘ exonerated, quit-claimed, and simply dischar-
 ‘ ged, likeas we, &c. the said B. and all the
 ‘ representatives of his said deceased father,
 ‘ and his and their heirs and executors, and
 ‘ and all persons that are bound for them in the
 ‘ debts

debts above specified, of all personal executi-
 on competent, or that may be competent to
 us, or to our said son, against them, or any
 of them, upon the rights above narrated; *and*
 also of all real execution competent, or that
 may be competent to us, or to our said son,
 against the said B. his other lands and estate,
 presently pertaining, or which shall happen to
 pertain to him, except allenary against the
 lands and others above mentioned, with the
 pertinents disposed to us by the said —
For farther security whereof it shall be lawful
 to us, and our said son, and our heirs and suc-
 cessors, notwithstanding of this present dis-
 charge, to apprise or adjudge the same upon
 the debts above written, whereupon there is
 no adjudication as yet, and to use what far-
 ther execution shall be necessary in order
 thereto, or to bruik and possess the same
 lands and others foresaid, disposed to us by
 virtue of the adjudication above specified,
 and rights above mentioned, granted to us of
 the same, notwithstanding of this present dis-
 charge, which we shall only be obliged to
 warrant under the conditions and quality
 above mentioned, from our own and our
 said son's proper facts and deeds allenary.
 It is always hereby declared, that this pre-
 sent discharge shall noways hinder nor pre-
 judge the said B. as to any relief competent
 to him from the persons above named, or
 U any

‘ any of them, or their representatives, who
 ‘ stood bound for the debts above expressed.’

When lands being wadset, or disposed under reversion, the parties afterward agree that this right be converted into an irredeemable one, this is done by the creditor’s purchasing from the wadsetter a discharge of the reversion: The stile whereof is as follows. ‘ Be it
 ‘ known, &c. me *A. Forasmuch* I, by my
 ‘ disposition of the date —— sold, annalized
 ‘ and disposed to *B.* heritably under reversion,
 ‘ on, all and sundry the lands and barony of
 ‘ —— and bound and obliged me, my heirs
 ‘ and successors, to duly and lawfully invest
 ‘ and seize the said *B.* and his forefairs, in all
 ‘ and whole —— and made, constitute and
 ‘ ordained *C.* procurator for resigning thereof
 ‘ in the superior’s hands in his favour: Reserving
 ‘ always to me, &c. (*Here take in the
 ‘ reservations and clause of reversion*) And with
 ‘ the other provisions and conditions mentioned
 ‘ and set down in the said disposition, as the
 ‘ same at more length bears: *And now, for
 ‘ certain* causes and considerations, *wit ye me*
 ‘ to have exonerated, discharged and over-given,
 ‘ *likeas*, &c. to and in favour of the said
 ‘ *B.* the reversion, provision, and condition of
 ‘ reversion above written, contained in the said
 ‘ disposition and right, made and granted by
 ‘ me to the said *B.* of the lands and others above
 ‘ specified, and tithes thereof, and in the
 ‘ procu-

' procuratory of resignation, and infeftments
 ' following thereupon, and of all right of re-
 ' demption competent, or that anyways may be
 ' competent to me, for the redemption of the
 ' said lands and others foresaid, with the per-
 ' tinents, or any part thereof, and tithes of
 ' the same, from the said B. and his foresaids,
 ' by whatsoever manner of way, in time co-
 ' ming. *And* I do hereby will and consent,
 ' that the lands and others above written, and
 ' tithes thereof, abide and remain with the
 ' said ——— and his foresaids, heritably and
 ' irredeemably, without any manner of rever-
 ' sion, redemption or regrefs whatsoever, sick-
 ' like, and in the same manner, as if the fore-
 ' said provision and condition of reversion had
 ' not been contained in the said disposition,
 ' procuratory of resignation, and infeftments
 ' following thereupon; *reserving* always to me
 ' the said A. and my foresaids, the other pro-
 ' visions and conditions contained in the said
 ' disposition and right, which shall remain
 ' unhurt hereby; so that it is declared that
 ' there is nothing hereby renounced and dis-
 ' charged, but only the reversion and right
 ' of redemption; *which right*, renunciation,
 ' and discharge of the said reversion and right
 ' of redemption, I bind and oblige me, my
 ' heirs and successors, to warrant to the said
 ' B. and his foresaids, to be free, safe and sure,
 ' from all facts and deeds done, or to be done

‘ by me, or by my forefaids, that may be hurtful or prejudicial hereto in any fort.’ Registration.

There is a reversion competent to the debtor, and his heir, to lands apprifed or adjudged, and that for five or ten years after leading thefe real diligences; after which time all right of reversion is expired: However, it is proper that the apprifed purchase the good-will of the debtor, or of his heir, which is done by granting a renunciation of all right he has, or may pretend to the eftate comprifed. This renunciation and good-will, in favour of a fingular fucceffor, is in this ftile.

‘ Be it known, &c. me *A.* brother-german
 ‘ and apparent heir to the deceaft — with
 ‘ the fpecial advice and confent of *A.* my eldest lawful fon, and me the faid *A.* for my-
 ‘ felf, and us both with one confent, *foraf-*
 ‘ *muchas* *B.* hath acquired right to feveral ap-
 ‘ prifings of all and whole the lands and ba-
 ‘ rony of — with the meffuages, &c. *And*
 ‘ *we confidering* that the faid *B.* hath given
 ‘ out great and confiderable fums for the ac-
 ‘ quiring of thefe apprifings, and other real
 ‘ diligences that affected the faid eftate, which
 ‘ are far above the real value of the fame; *as*
 ‘ *alfo* confidering that the faid *B.* is our near
 ‘ kinfman, being, by his grandmother, descend-
 ‘ ed of the family of *A.* and did, after pur-
 ‘ chafing of all the faid debts and diligences,

ftill

‘ still allow to the said — a freedom for
 ‘ his person, and did not trouble him with
 ‘ caption, *and that* it is more kindly and na-
 ‘ tural that the said *B.* and his foresaids, brui-
 ‘ and enjoy the said estate of *B.* than a stran-
 ‘ ger, it being absolutely impossible for us, or
 ‘ either of us to redeem the said diligences, tho’
 ‘ they were under reversion, the debts where-
 ‘ upon they proceed far exceeding the value
 ‘ thereof, so that we can neither possess the
 ‘ same, nor no part thereof, ourselves, nor
 ‘ get any benefit by quitting our kindness to
 ‘ the reversion thereof; *therefore wit ye us,*
 ‘ both with one consent, to have given and
 ‘ granted, as we, by these presents, renounce,
 ‘ to and in favour of the said *B.* and his heirs
 ‘ and assignies mentioned in the foresaid secu-
 ‘ rities, all kindness and title whatsoever, that
 ‘ we, or either of us, or our heirs or posteri-
 ‘ ty, may have to the foresaid estate of *B.* and
 ‘ backbond above mentioned; and we are con-
 ‘ tent that the same be possessed by him, and
 ‘ his heirs, and their tenants, peaceably, in all
 ‘ time coming, and we renounce the same to
 ‘ him with our blessing and benison, and good-
 ‘ will, for now and ever; *and* we bind and
 ‘ oblige us, conjunctly and severally, our heirs,
 ‘ successors and executors, *never to trouble nor*
 ‘ molest him, nor his tenants, nor cottars, in
 ‘ the peaceable possession and enjoying there-
 ‘ of, for now and ever; nor anyways quarrel
 ‘ nor impugn the rights and diligences acqui-

' red, or to be acquired by him : *And we de-*
 ' *clare* that we look upon *him*, and desire that
 ' he be holden and esteemed, in all time co-
 ' ming, as *heritable proprietor* of the said lands
 ' and barony, and we wish that the same may
 ' be bruiked by him, and his forefairs, as
 ' their own proper heritage, at their pleasure,
 ' perpetually in all time coming ; *and we re-*
 ' *nounce* and give over any right or pretensi-
 ' on that we, or our forefairs, have, or may
 ' have, or to the premisses claim right, or to
 ' the said backbond, perpetually in all time
 ' coming.' In this case a resignation *ad per-*
petuam remanentiam was thought proper, be-
 cause it seems the appriser had purchased
 right to the superiority of the lands or an-
 nualrent.

A DISCHARGE of an Obligement of Warrandice in a Contract, whereby the Party now discharged was bound to relieve the Party discharging of all public Burdens due to the Minister out of certain Lands disponed, and that for Years preceeding and in Time coming.

BE it known, &c. me *A.* heir by pro-
 gress to the deceast *A.* my grandfa-
 ther, to whom, and in whose favour, the
 procuratory of resignation after mentioned
 is made and granted: *Forasmuch* as the de-
 ceast *B.* by a procuratory of resignation,
 subscribed with his hand, of the date the
 — day of — bound and obliged him,
 his heirs and fucceffors, to have made due
 and lawful resignation of all and whole the
 town and lands of — with the
 manor-place, &c. together with the teind-
 sheaves thereof, and with the right and
 privilege of free barony, free regality,
 chapel and chancellary, within the whole
 bounds of the said lands, or any part there-
 of, with the right and immunity of exemp-
 tion

' tion of the said ————— his heirs and af-
 ' signies under written, from all taxations,
 ' states-stents, contributions, and other bur-
 ' dens and impositions whatsoever, and from
 ' all jurisdiction ordinary and extraordinary,
 ' and from all compearance before any judge
 ' or judges whatsoever within this realm,
 ' submitting them to his majesty, and lords
 ' of his majesty's secret council and session,
 ' allearly; and with the exemption of the
 ' tenants and possessors of the said lands
 ' from all compearance before whatsoever
 ' judge or judges, criminal or civil, spiritual
 ' or temporal, except before the lords of his
 ' majesty's secret council and session, dis-
 ' charging likewise all other judges from all
 ' calling or pursuing of the said deceased *A.*
 ' and his forefairs, and of their officers in
 ' that part, for ever, and with the right and
 ' privilege to buy and sell within all parts of
 ' this realm, without payment of several cu-
 ' stoms, conform to the tenor of the infest-
 ' ment granted to the said *B.* and his predeces-
 ' sors thereupon, *in the hands* of our sovereign
 ' lord, *in favour*, and for new infestment
 ' of the same, to be made, given and grant-
 ' ed to the said *A.* his heirs and assignies
 ' whatsoever, heritably, to be holden of our
 ' said sovereign lord for the yearly payment
 ' of the duties *respective* underwritten, *viz.*
 ' for the lands *respective* above specified, with
 ' the salmon-fishing, woods, privileges and
 ' pertinent

' pertinents thereof, the sum of 26 s. 8 d.
 ' Scots money, at *Whitsunday* and *Martinmas*,
 ' by equal portions, in name of feu-farm, and
 ' for the relieving of the said *B.* his heirs and
 ' successors, of that part of the feu-duty of
 ' 500 merks money foresaid, then addebt-
 ' ed by him to his majesty, for the lands,
 ' lordship, and barony of —————
 ' whereof the barony of ————— is part
 ' and pertinent by annexation, conform to
 ' the infeftments granted to the said *B.* and
 ' his predecessors thereupon, without doc-
 ' bling of the feu-mail at the entry of the
 ' heirs or successors of the said *A.* and also
 ' the said *A.* and his forefairs, paying yearly
 ' for all and fundry the teind-sheaves of the
 ' lands above specified, with their pertinents,
 ' to the ministers to be lawfully provided,
 ' admitted, and actually serving the cure at
 ' the kirk of *M.* for the time, the sum of
 ' four merks money above written, at the
 ' term of *Martinmas* allenary, and that for
 ' all other duty, exaction, service or bur-
 ' den that may be asked, by whatsoever other
 ' person or persons, forth of the lands, teind-
 ' sheaves, and others above written, in all
 ' time thereafter; and the said *B.* granted a
 ' procuratory of resignation to the effect a-
 ' bove mentioned: *And which resignation*, and
 ' infeftment to follow thereupon, and all
 ' and fundry the lands, fishing, teind-sheaves,
 ' and others above specified, with their privi-
 ' leges.

‘ leges and pertinents above mentioned, the
 ‘ said *B.* bound and obliged him, his heirs
 ‘ and successors whatsoever, to warrant, ac-
 ‘ quit and defend to the said *A.* and his fore-
 ‘ saids, from all facts and deeds done by the
 ‘ said *B.* and umquhile ————— his good-
 ‘ fire’s brother, and to have been done by
 ‘ the said *B.* granter of the said procuratory,
 ‘ his heirs and successors, in any time then
 ‘ bygone and to come: *And also*, he bound
 ‘ and obliged him, and his foresaids, to war-
 ‘ rant that the infeftment above written was
 ‘ made and granted without any diminution
 ‘ of the rental of the lands, and others above
 ‘ specified; and from all action that might
 ‘ be pursued by his highness, or his successors,
 ‘ or by any other person or persons whatsoe-
 ‘ ver, for the eviction of the said lands, and
 ‘ others foresaid, or any part thereof, thro’
 ‘ the diminution of the rental of the same.
 ‘ *And likewise*, the said *B.* bound and obliged
 ‘ him, and his foresaids, to warrant and re-
 ‘ lieve the said *D.* and his foresaids, at the
 ‘ hands of the minister of the said kirk of
 ‘ *M.* then present and to come, and others
 ‘ having the right and power; and from all
 ‘ other duty and exaction whatsoever, that
 ‘ they may claim for the teind-sheaves above
 ‘ specified, except allenary the said yearly du-
 ‘ ty of 4 merks money above written, at the
 ‘ term above expressed; *with this provision*,
 ‘ that the limitation and restriction of the said
 ‘ warandice,

' warrandice, in manner above specified, should
 ' noways be hurtful or prejudicial to the
 ' cloutes of warrandice contained in the old
 ' infeftments granted to the authors and pre-
 ' decessors of the said *A.* of the lands and
 ' others above specified, by the lords of
 ' *St. John* and preceptors of *Torphichen*, as
 ' the foresaid procuratory of resignation more
 ' fully proports: *Likeas*, upon the 13th
 ' day of *March* 1617 years, there was a de-
 ' creet of suspension pronounced by the lords
 ' of council and session, at the instance of
 ' the said *D.* and *&c.* whereby the said lords
 ' decerned and ordained the said *C.* for him-
 ' self, and taking burden upon him for *J. C.*
 ' his eldest son and apparent heir, and as fa-
 ' ther, tutor and administrator to him, and
 ' the said *C.* for himself, their heirs, ex-
 ' ecutors and successors, to pay and deliver
 ' yearly, and each year, in all time thereafter,
 ' to the said ——— and ——— their heirs,
 ' executors or assignies, the sum of fifty
 ' pounds money of this realm, upon the first
 ' day of *April* yearly in all time thereafter,
 ' the first term's payment thereof to begin
 ' upon the first day of *April* 1617, and that
 ' in full contentation, compleat payment and
 ' satisfaction of the warrandice contained in
 ' the said procuratory of resignation, granted
 ' by the said *C.* to the forenamed persons,
 ' concerning their relief of the said minister's
 ' stipend at *M.* then present and to come;
 ' *with*

* *with this* special provision and condition,
 * That, if the said C. his son, and their fore-
 * saids, contented and paid yearly, and each
 * year, in all time thereafter, to the said
 * ———— and ———— and their
 * foresaids, the sum of 50 merks *Scots*, or to
 * any other having power to receive the same,
 * within the towns of *Edinburgh* or *Leith*,
 * (which, with consent of the said parties,
 * were places designed for that effect) in the
 * month of ----- before the rising of the ses-
 * sion in the said month, and that upon the re-
 * quisition of eight days, which was to have
 * been lawfully made by the said ---- and their
 * foresaids, to the said C. his said son, and
 * their foresaids, in that case the said C. his
 * said son, and foresaids, to be free of the said
 * sum of 50 pounds, and no otherways; the
 * first year's payment of the said sum of 50
 * merks to begin in the month of ----- 1617.
 * which was for the crop 1616. for which
 * sum of 50 merks, for the said crop 1616.
 * the said Lords decerned the said C. his said
 * son, and their foresaids, to pay the same
 * to *W. D.* advocate, in name of the said
 * ———— and ----- And sicklike yearly there-
 * after, during the said *W. D.* his abiding in
 * *Edinburgh*, and so long as he should have
 * commission to receive the same, and, after
 * him, to any others having their power: And
 * therefore the said Lords of council and ses-
 * sion, of consent of the said ———— for him-
 * self,

' self, and taking burden upon him for the o-
 ' ther persons above written, and of the said
 ' *W. D.* suspended *simpliciter* the letters of
 ' horning raised by them against the said *C.*
 ' so far as concerned the said sum of 100 merks,
 ' as that part of the said sum of 300 merks
 ' modified yearly for the said minister at the
 ' kirk of *M.* his stipend, and that for all time
 ' then bygone, and in time coming; and de-
 ' cerned the same, whole effect and execution
 ' thereof, to cease in all time thereafter: And
 ' which decreet was transferred by the Lords
 ' of council and session, at the instance of, &c.
 ' son and heir served and retoured to the said
 ' umquhile — the said — and — *acti-*
 ' *ve*, against the then Lord *T* — as son and
 ' heir to the said *C.* his father *passive*, upon
 ' the 20th *July* 1624. as the said decreet of
 ' transferring more fully declares. *Likeas* I,
 ' the said *A.* of, &c. by my discharge, of the
 ' date the 27th day of *February* 1669. did ex-
 ' oner, quit-claim, and simply discharge *W* —
 ' now Lord *T* — his heirs and successors, of
 ' my just and equal third part of the said sum
 ' of 50 merks contained in the said decreet re-
 ' covered against his grandfather, and that for
 ' all years and terms preceeding *Whitfunday*
 ' in the year 1669. and of the said decreet it-
 ' self, with all that had followed, or might
 ' follow upon the same, in so far as might or
 ' could be extended to my third part of the
 ' said

• said 50 merks for the years above specified,
 • thereby discharged, as in the foresaid dis-
 • charge at more length is expressed. *And,*
 • *in like manner,* upon the 10th day of *March*
 • 1686. I, as heir served and retoured to the
 • deceast *A.* my father, who was heir served
 • and retoured to the said umquhile *A.* his fa-
 • ther and my grandfather, obtained a decreet
 • before the Lords of council and session a-
 • gainst *B.* now of ——— as heir served and re-
 • toured to the said deceast *B.* his grandfather,
 • whereby the said Lords of council and ses-
 • sion found and declared, that, in respect of
 • the special clause of warrandice above men-
 • tioned, the said *B.* was liable to make pay-
 • ment to me of one boll, three firlots, and
 • one lippy of bear, and three bolls, two fir-
 • lots, and three lippies of meal, and of the
 • sum of 45 *l.* 10 *s.* 6 *d.* of silver stipend, with
 • the deduction of the said 4 merks, and that
 • from the year 1664. to the year 1680. *in-*
 • *clusive,* and thereafter. And the said Lords
 • found and declared, that my proportion of
 • the minister's stipend of *M.* is one boll, three
 • firlots, one lippy, and three fourth parts of
 • a lippy of bear, and three bolls, two firlots,
 • three lippies and an half lippy, and two
 • ninth parts of a fourth part of a lippy of
 • meal, and of the sum of 48 *l.* 3 *s.* 10 *d.* and
 • an halfpenny, and a ninth part of six far-
 • things, with the ninth part of a penny,
 • which

' which the said Lords found and declared I had
 ' constantly paid to the minister of *M.* And,
 ' in like manner, the said Lords modified the
 ' sum of 4 *l.* 3 *s.* 4 *d.* for each boll of bear
 ' and meal over-head, for all years then by-
 ' gone, and in time coming; and decerned and
 ' ordained the said *B.* heir served and retour-
 ' ed to — his father and oye, and heir by
 ' progress served and retoured to the said de-
 ' ceast — to make payment to me of the
 ' sum of 21 *l.* 1 *s.* 8 *d.* as the price of 1 boll,
 ' 3 firlots, and 1 lippy of bear, and of
 ' 3 bolls, 2 firlots, 3 lippies of meal, at 4 *l.*
 ' 3 *s.* 4 *d.* the boll, being 5 bolls, 1 firlot, and
 ' 1 peck, and that yearly, for the year of God
 ' 1664. and whole subsequent years, till the
 ' year 1680. extending the prices of the said
 ' victual to the sum of 376 *l.* 5 *s.* 4 *d.* Scots
 ' money. And also, to make payment to me
 ' of the sum of 45 *l.* 10 *s.* 6 *d.* of silver sti-
 ' pend, payable, and paid by me to the said
 ' minister of *M.* by and attour the 4 *merks*,
 ' and that particularly for the said year 1664.
 ' and subsequent years, till the foresaid year
 ' 1680. *inclusiv*e, extending the said silver sti-
 ' pend, during that space, to the sum of 773 *l.*
 ' 18 *s.* 6 *d.* and also extending the said prices
 ' of the victual and silver stipend duty, the
 ' space foresaid, to the sum of 1150 *l.* 3 *s.*
 ' 10 *d.* And also the said Lords decerned and
 ' ordained the said *B.* to warrant, relieve, and

' skaitheless keep me at the hand of the said
 ' minister of *M.* present and to come, of the
 ' said stipend, victual and money, payable by
 ' me to them, except the said 4 *merks* yearly,
 ' or otherways to make payment to me of the
 ' sum of 22 *l.* 2 *s.* 8 *d.* as the price of the said
 ' 1 boll, 3 firlots, and 1 lippy of bear, and of
 ' 3 bolls, 2 firlots, and 3 lippies of meal; be-
 ' ing 5 bolls, 1 firlot, and 1 peck of victual,
 ' at 4 *l.* 3 *s.* 4 *d.* the boll. And likeways to
 ' make payment of the sum of 45 *l.* 10 *s.* 6 *d.*
 ' of stipend, by and attour the said 4 *merks*, and
 ' that yearly, since the said year 1680. and in time
 ' coming, ay and while I be relieved of the same,
 ' as the said decreet more fully proports. *And*
 ' *now, seeing* that the said *B.* hath made pay-
 ' ment to me of the sum of ——— for grant-
 ' ing of the discharge after mentioned, where-
 ' with I hold me well contented and satisfied,
 ' *therefore wit ye me* to have exonered, &c.
 ' the said *B.* his heirs and executors, and all
 ' others the representatives of his said decess
 ' grandfather, of that part of the clause of
 ' warrandice above mentioned, whereby the
 ' said *B.* was obliged to relieve the said *A.* my
 ' grandfather, and his heirs, at the hands of
 ' the minister of *M.* then present and to come,
 ' and others having the right and power, from
 ' all other duty and exaction whatsoever, that
 ' they might claim for the teind-sheaves above
 ' specified, except allenarly the said duty of 4
 ' *merks*,

‘ *marks*, and that not only for all evictions that
 ‘ are bypast, but for all that may hereafter
 ‘ happen by supervenient laws, or otherways,
 ‘ and of the decreet above mentioned, obtain-
 ‘ ed at the instance of my said grandfather,
 ‘ in the year 1617. and of the decreet of
 ‘ transferring thereof, likeways obtained by
 ‘ him in the foresaid year 1624. and of the
 ‘ other decreet above written, obtained at my
 ‘ instance against the said *B.* in the year 1686.
 ‘ and of all action and execution competent,
 ‘ or that may be competent to me, my heirs
 ‘ or assignies, against the said *B.* his heirs and
 ‘ successors upon the clause of warrandice a-
 ‘ bove mentioned, in relation to the teind-
 ‘ sheaves of the lands, and others disposed by
 ‘ his grandfather to my grandfather, or by
 ‘ virtue of the decreets above specified, or a-
 ‘ ny of them, for now and ever. *Which dis-*
 ‘ *charge* above written, I bind and oblige me,
 ‘ my heirs and successors, to warrant to the
 ‘ said *B.* and his foresaids, and to all the re-
 ‘ presentatives of his said grandfather, to be
 ‘ a sufficient exoneration concerning the pre-
 ‘ misses, at all hands, and against all deadly.
 ‘ *Likeas* I have delivered up to him an extract
 ‘ of the said decreet of transferring in the
 ‘ year 1624. with the extract of the decreet a-
 ‘ bove mentioned, obtained at my own in-
 ‘ stance, to be kept or cancelled by him at his
 ‘ pleasure, &c. Registration.

The Stile of a general and mutual Discharge between two Parties.

‘ **A**T Edinburgh, the ——— day of ———
 ‘ years, clear compt and reckoning be-
 ‘ ing made betwixt *A.* on the one part, and
 ‘ *B.* and ——— his spouse on the other part,
 ‘ concerning all sums of money, debts, compt,
 ‘ reckoning, and others whatsoever, which
 ‘ any of them may ask or crave from o-
 ‘ thers, for themselves, or as representing
 ‘ whatsoever person or persons, by contract,
 ‘ bond, minute of contract, decreet, missive
 ‘ letters, compts, or whatsoever other man-
 ‘ ner of way, right or title, for whatsoever
 ‘ cause or occasion bygone, preceeding the
 ‘ date hereof, *it is found* that they are com-
 ‘ pletely satisfied and paid, every one of them
 ‘ of others, and that they have fulfilled to o-
 ‘ thers all bonds, obligations, contracts, compts,
 ‘ and others granted by any of them to others,
 ‘ and which any of them may crave of others,
 ‘ by virtue of whatsoever right, or for what-
 ‘ soever cause or occasion bygone, preceed-
 ‘ ing the day and date hereof. *And there-*
 ‘ *fore* the said *A.* by these presents, exoners,
 ‘ quit-claims, and simply discharges the said
 ‘ *B.* and his said spouse, their heirs, execu-
 ‘ tors, and all others whom it effeirs, of all
 ‘ sums of money, debts, compts, reckonings,
 ‘ obligations,

‘ obligations, and others whatsoever, which
 ‘ he for himself, or as having right from, or
 ‘ representing whatsoever person or persons,
 ‘ can ask or crave of the said *B.* and his said
 ‘ spouse, or their above specified, by bond,
 ‘ contract, or whatsoever manner of way,
 ‘ right or title, for whatsoever cause or oc-
 ‘ casion bygone, preceeding the date hereof,
 ‘ and of all writs made thereupon, and of all
 ‘ action, instance and execution competent,
 ‘ or that may be competent to them, by virtue
 ‘ of the same, with all that has followed, or
 ‘ may follow thereupon, for now and ever.
 ‘ *Likeas*, the said *B.* for himself, and taking
 ‘ burden upon him for the said ——— his
 ‘ spouse, and she for herself, with his con-
 ‘ sent, and they both with one consent, by
 ‘ these presents, exoner (*verbatim as on A's*
 ‘ *part*) *As also*, both the said parties declare,
 ‘ that this their general discharge shall be as
 ‘ sufficient each of them to others, as if the
 ‘ same were special and particular, where-
 ‘ anent they, for them and their above men-
 ‘ tioned, hereby dispense, renouncing all ex-
 ‘ ceptions of the law that can be proponed
 ‘ or alledged in the contrary. *And in like*
 ‘ *manner*, the said *A.* binds and obliges him,
 ‘ his heirs, successors and executors, to war-
 ‘ rant this discharge above written to be va-
 ‘ lid, good and sufficient to the said *B.* his
 ‘ said spouse, and their above specified, at all
 ‘ hands, and against all deadly, as law will.

‘ *And*

‘ And *likelike* the said *B.* for himself, and tak-
 ‘ ing burden upon him for the said ———
 ‘ his spouse, and she for herself with his con-
 ‘ sent, and they both with one consent, bind
 ‘ and oblige them, conjunctly and severally,
 ‘ their heirs, successors and executors, to
 ‘ warrant their discharge, above rehearsed, to
 ‘ be good, valid and sufficient to the said *A.*
 ‘ and his forefairs, at all hands, and against
 ‘ all deadly. *It is always hereby provided and*
 ‘ *declared,* that all discharges formerly sub-
 ‘ scribed and delivered by any of the before-
 ‘ named persons, to others, shall noways be
 ‘ hurt nor prejudged by this present discharge,
 ‘ but shall stand valid and effectual notwith-
 ‘ standing thereof.’ Registration for prefer-
 ‘ vation, and letters, if need be.

After the close of a plea, which ended in
 a transaction, a mutual general discharge was
 in a more brief form thus ‘ At ———, &c.
 ‘ day of ———, &c. Years, it is agreed be-
 ‘ twixt *A.* on the one part, and *B.* on the o-
 ‘ ther part, that they shall grant mutual dis-
 ‘ charges to each other in manner following,
 ‘ *to wit,* the said *A.* for himself, and as hving
 ‘ right from ——— or any of them, by these
 ‘ presents, exoners, quit-claims, and simply
 ‘ discharges the said *B.* his heirs and execu-
 ‘ tors, of all debts and sums of money,
 ‘ compts, reckonings, and every other thing
 ‘ whatsoever that he can ask, claim or crave
 ‘ from the said *B.* or can lay to his charge,
 ‘ for

' for whatsoever cause or occasion bygone,
 ' preceeding the date hereof, dispensing with
 ' the generality, and admitting the same to
 ' be as valid and sufficient as if every particu-
 ' lar were herein specially mentioned and ex-
 ' pressed; declaring, nevertheless, that this
 ' discharge shall not prejudice the disposition
 ' and assignation of this date, granted by the
 ' said *A.* to the said *B.* And, on the other
 ' part, the said *B.* exoners, quit-claims, &c.
 ' (*verbatim as on A's part*) And both parties
 ' bind and oblige themselves, *hinc inde*, to o-
 ' thers, to warrant this present discharge to
 ' one another, to be good and sufficient exo-
 ' nerations concerning the premisses, at all
 ' hands, and against all deadly.' Registrati-
 on, as above.

When a cautioner or co-principal pays the
 debt, the creditor gives him not only a dis-
 charge of the bond, in so far as he stands
 bound, but also an assignation to the full
 debt, and bond against the principal, or to
 the bond in so far as the other co-principal
 is bound to relieve him; which discharge
 and assignation is in this form: ' Be it known,
 ' &c. *Forasmuch as*, &c. (*Here narrate the bond,*
 ' *with the clause of relief subjoined to the bond,*
 ' *or the bond of relief apart, all in common*
 ' *for.*) And seeing the said *D.* hath made
 ' payment to me, &c. therefore, wit ye me,
 ' not only to have exonerated, &c. the said *D.*
 ' cautioner above named, of the bond above
 ' mentioned,

' mentioned, and whole sums of money,
 ' principal, annuallrent, and liquidate expen-
 ' ces above specified, contained therein, and
 ' of all that has followed, or may follow there-
 ' upon; *but also*, to have made and constituted,
 ' &c. (*Here follows the stile of an ordinary as-*
 ' *signation*) surrogating and substituting the
 ' said D. in my full right and place of the
 ' premisses, and that in so far allenary as the
 ' said bond, and diligence to be done there-
 ' upon, may be extended against the said B.
 ' principal debtor, but noways against the
 ' said cautioner, (*or either of them*) who is
 ' discharged in manner above written, with
 ' power, &c. *Which discharge* and assigna-
 ' tion I bind, &c. to warrant in manner fol-
 ' lowing, *viz.* the foresaid discharge at all
 ' hands, and against all deadly, and the said
 ' assignation from all facts and deeds done,
 ' and to be done, prejudicial hereto, allenary,
 ' *to wit*, that I have not made nor granted,
 ' &c. any assignation, or other right or dis-
 ' charge, except the discharge above written,
 ' that may be hurtful, &c.' (*as in the clause*
 ' *of warrandice of an ordinary assignation.*)

The restrictive clause, *And that in so far*
allenary, &c. is, by some writers, placed im-
 mediately before the clause *surrogating and*
substituting, &c.

In place of the exception of the discharge
 out of the warrandice of the assignation, some
 put, after the ordinary and simple clause of
 ' warrandice,

warrantice, a declaration, thus; ‘ Declaring
 ‘ nevertheless, that my granting both a dis-
 ‘ charge and assignation shall in noways infer
 ‘ double warrantice against me.’

If the payer be a co-principal, and there
 be no written instruction of relief, in whole
 or part of the debt, the assignation is thus;
 ‘ — Cessioners and assignaies, in and to so much
 ‘ of the said principal sum of — and annual-
 ‘ rents thereof above mentioned, both bygone
 ‘ and in time coming, as the said C. stands ob-
 ‘ liged to relieve him of by the bond above
 ‘ mentioned, and to a proportional part of the
 ‘ liquidate expences thereof, above specified,
 ‘ effeiring thereto, and in and to the foresaid
 ‘ bond, &c. in so far only as the same may be
 ‘ extended against the said C. for the sums
 ‘ hereby assigned, and no farther.’ Surroga-
 ‘ ting, &c.

Of ASSIGNATIONS compound.

AN assignation being a writ of convey-
 ance setting over a right of a moveable
 subject, we have formerly treated of simple
 assignations; it remains now that we account
 for compound ones.

If personal diligence, as horning and cap-
 tion, be raised on the bond, or real diligence,
 as arrestment and forthcoming, be used by
 the creditor, these respective diligences must
 be narrated; and it is this chiefly which gives
 to

to this conveyance the denomination of a compound writ.

Assignations are to be considered in three several forms, from which the variety proceeds; and that is, 1st, With respect to the granter. 2^{dly}, To the receiver. And, lastly, With respect to the subject-matter conveyed. If the assignation is to be granted by the creditor himself, it is thus; ——— ‘ Be it known to
 ‘ all men, by these presents, me *A. Forasmuch-*
 ‘ *as, (Here narrate the registred bond, horn-*
 ‘ *ing, caption, arrestment, process or decreet*
 ‘ *of forthcoming, or the like moveable diligence,*
 ‘ *in common form, and thereafter subsume)*
 ‘ *And now, seeing B. hath made payment to*
 ‘ *me of a certain sum of money, &c. there-*
 ‘ *fore, wit ye me, to have made and constitu-*
 ‘ *ted, as I, by these presents, make and consti-*
 ‘ *rute the said B. his heirs and donatars, my*
 ‘ *very lawful and irrevocable cessioners and as-*
 ‘ *signies, in and to, &c.’ as in the stile of a*
 ‘ *simple assignation, page 71. And as to the*
 ‘ *diligence, you say, ‘ And in and to the fore-*
 ‘ *said bond itself, decreet of registration in-*
 ‘ *terponed thereto, letters of horning raised*
 ‘ *thereupon, and executions thereof, with the*
 ‘ *letters of caption following upon the same.*
 ‘ *(And so forth as to any other diligence) Surro-*
 ‘ *gating, &c. with power, &c. and, if need*
 ‘ *be, to cause put the foresaid letters of horn-*
 ‘ *ing and caption to farther execution, &c.*
 ‘ *and to use all manner of legal diligence,*
 ‘ *&c.*

‘ &c.’ Or thus; ‘ And to prosecute the fore-
 ‘ said arrestment, and process of forthcoming
 ‘ raised thereon.’ The warrandice is the same
 as in a simple assignation. ‘ *Likeas* I have in-
 ‘ stantly delivered, &c. (*Here set down briefly*
the bond and inventory of the diligence follow-
ing thereon; or, which is shorter, say, ‘ Likeas
 ‘ I have instantly delivered to the said B. the
 ‘ whole writs above narrated, to be kept, &c’.

When the assignation is granted by the heir
 or executor, of the original creditor, there is
 no difference in the body of the assignation
 from what is above set down, save only the
 granter has the additional designation of *heir*
or executor, as is observed in the stile of dis-
 charges.

If the assignation be made by a factor, he
 must have a special power and express warrant,
 by his factory, to make conveyance of his
 constituent’s effects; for regularly such power
 is not implied in commissions and mandates.
 The form of which is thus; ‘ Be it known,
 ‘ &c. me A. as factor for B. specially consti-
 ‘ tuted, with power to grant assignations and
 ‘ other conveyances, in manner underwritten;
 ‘ *forasmuchas,* (*Here narrate the bond, and*
such diligence as was done by the constituent,
and after which mention the factory, and spe-
cially that power and faculty to assign, and
next the diligence done by the factor, and then
subsume) ‘ And now seeing that C. hath made
 ‘ payment to me, as factor for, and in name
 Y ‘ and

‘ and behalf of the said *B.* of the sum of—
 ‘ therefore wit ye me, as factor foresaid, and by
 ‘ virtue of the power and faculty given to me
 ‘ hereanent, in manner above narrated, to have
 ‘ made and constituted, &c.’

Tho’ assignations by tutors, in name of their pupil, be not sufficient and valid rights *ante redditas rationes*, yet these may, and are in use to be granted: The stile whereof, in what concerns the way of naming the granter of the writ, is much of the tenor with that in discharges made by a tutor in name and behalf of his pupil, which have been treated of already.

The same may be said of assignations by minors, with consent of their curators, tho’ in effect these are not so easily reduced, nor is the minor without good ground reponed against them.

When the assignation is granted by a wife, with consent of her husband, the names of the granters are expressed as in discharges given by them: However, to illustrate this part of compound assignations, take the following example of an assignation to a bond of provision by a wife with consent of her husband. ‘ Be it
 ‘ known, me *A.* youngest lawful daughter to
 ‘ the deceased *B.* with advice and consent of *C.*
 ‘ my husband, for his interest, and me the said
 ‘ *C.* for myself, and for all right that I have,
 ‘ or can pretend to the sums of money after
 ‘ mentioned,

' mentioned, by assignation, disposition, *jure*
 ' *mariti*, or otherways, with consent of, and
 ' taking burden upon me for my said spouse,
 ' and we both with one consent and assent;
 ' *forasmuch* as the said deceast *B.* by his bond
 ' of provision, of the date ——— bound and
 ' obliged him, his heirs, successors and execu-
 ' tors, to have made payment to me the said
 ' *A.* of the sum of 30,000 merks *Scots* mo-
 ' ney at my age of sixteen years; and in case
 ' it should happen any heirs male, of tailzie
 ' or provision, not descended of the said *B.*
 ' his own body, to succeed to him, or to *D.*
 ' his son, in the lands and barony of *R.* not
 ' being descended of his own body, as said is,
 ' to pay to me the said *A.* the sum of 10,000
 ' merks more at the time after specified; which
 ' sums *respective* above mentioned are appoint-
 ' ed to be in full contentation and satisfaction
 ' to me of all bairns part of gear, natural por-
 ' tion, goods, gear, debts, and all other bene-
 ' fit that might pertain and befall to me, or
 ' that I might ask or crave by or through the
 ' decease of the said *B.* my father, and ———
 ' his spouse, or either of them, and of all
 ' former provisions made by him to me, as
 ' the foresaid bond of provision more fully
 ' contains. *And seeing* that the said *D.* my
 ' brother, died without heirs male of his own
 ' body, and that my brother *E.* who is, and
 ' hath been dumb and deaf since his birth, is
 ' now come to a considerable age, and unmar-

' ried, so that the estate will fall, pertain, and
 ' descend to the heirs male of my brother *D.*
 ' according to the bond of tailzie made by my
 ' father thereof, and I will come thereby to
 ' have right to the said sum of 10,000 merks:
 ' *As also seeing* that *F.* hath made payment to
 ' me, &c. *therefore wit ye us,* both with one
 ' consent, and me the said *C.* taking burden
 ' upon me for my said spouse, as said is, to
 ' have made, constituted and ordained, and
 ' by these presents make, constitute and ordain
 ' the said *F.* his heirs and donatars, our very
 ' lawful and irrevocable cessioners and assignies,
 ' in and to the foresaid sum of 10,000 merks
 ' of additional portion granted to me the said
 ' *A.* in the case above specified, and to the an-
 ' nualrents thereof, if any shall be found due
 ' since the decease of the said *D.* and in time
 ' coming during the not-payment of the same,
 ' and in and to the foresaid bond of provision,
 ' whole clauses and obligations thereof, in so
 ' far as the same is conceived in favour of me
 ' the said *A.* for payment of the said sum of
 ' 10,000 merks; and all other writs granted,
 ' or which may be interpreted in my favour
 ' concerning the same; *surrogating,* &c. and
 ' to grant discharges, &c. and, if need be,
 ' to pursue the heirs male of the said deceased
 ' *B.* and *D.* his son, thereanent, and to use all
 ' manner of legal diligence for recovering
 ' payment thereof, with warrandice from fact
 ' and

‘ and deed ; excepting always from the fore-
 ‘ said warrandice any discharge granted by me
 ‘ the said *A.* and my said husband, or either
 ‘ of us, to — of the first 30,000 *merks* a-
 ‘ bove mentioned, and of my part of the ex-
 ‘ ecutry of the said deceast *B.* my father, in
 ‘ so far as the same may infer double warran-
 ‘ dice against me ; *and because* the foresaid
 ‘ bond of provision is registred, and already
 ‘ delivered to the said *F.* therefore we do here-
 ‘ by declare, that he, or his foresaids, may
 ‘ use or dispose thereupon, as their own pro-
 ‘ per evident ; in so far as the same is concei-
 ‘ ved in favour of me the said *A.* at their plea-
 ‘ sure, in time coming.’

Assignations are granted to one for himself,
 and his own behoof, which is expressed as in
 the preceeding examples : Or they are given
 to one in name and behalf of another ; in
 which case, in the subsumption, you may say,
 ‘ And seeing *B.* as tutor for, and in name and
 ‘ behalf of *C.* hath made payment, &c.’ Or
 thus, ‘ *B.* as tutor (*or curator*) for *C.* hath, in
 ‘ name and behalf of his pupil (*or minor*) made
 ‘ payment, &c. (*and the like, as discretion*
 ‘ *will direct*) therefore wit ye me to have made
 ‘ and constituted, &c. the said *C.* his heirs
 ‘ and donatars, &c.’ So that the right is gi-
 ven directly in the name of the constituent or
 pupil, and no mention made of the tutor or
 factor.

When the right is in favour of one in life-rent, and another in fee; as a husband takes a right of a sum and bond to himself and his wife, and the longest liver of them two in life-rent, and to the children, or to a child *nominatim* in fee, the subsumption imports payment of money by the husband for himself, and in name of his wife and child, and the assignation is made according to the destination of the party, as may be seen in a bond of borrowed money; in this case the subsumption, which begins with these words, *And now seeing*, is various, according to the cause of granting the right, which is either onerous or gratuitous. The manner of expressing these causes may be known from what is said already concerning simple assignations, and from the subsumptions there.

The stile of assignations varies much, according to the diversity of the matter conveyed, and circumstances thereof, each subject having a peculiar way in the enumerating and describing thereof. The order in assignations is the same with that in discharges; *first*, To mention the liquid sum, or thing assigned; and, *next*, the right or deed by which it is due; as may be discerned from the examples before and hereafter set down, tho', in sundry instances, I have seen this order transgressed.

The subject matter is either general, as, *All goods and gear*; and the right thereof is called

called *A general assignation and disposition* : or it is special, as a liquid sum and debt, for security whereof the cedent has right either to moveables or immoveables, and this right is either voluntary or legal, or, without respect to any foregoing debt, the assignation is of goods moveable directly, as an assignation to corns, cattle, household plenishing, and the like; which right is ordinarily termed a disposition, tho' the one name and the other are promiscuously used.

The proper characteristick of an assignation is; the having the words, ' Make, constitute and ordain *B.* my very lawful cessioners and assignies;' that of a disposition hath the words, ' Sell and annalzie, or, sell and dispone, or, give, grant and dispone.' But this is not universal, for I have noticed them used promiscuously; and both these modes of expression are in translations, which differ not from an assignation, but in this, that the assigney conveys,

When the cedent is in the bond designed otherways than by the title or designation that he now makes use of, to make a connection, both his old and new designations must be mentioned thus; ' *A.* of *B.* designed in the bond underwritten *A.* of *C.* or the like.'

Before a person forfeited can acquire any right, he must have a remission, &c. and in the right and conveyance it may be made mention of, thus; ' And now, seeing that
' *B.*

‘ B. hath obtained remission and rehabilitati-
 ‘ on from his sacred majesty, and hath made
 ‘ payment of a certain sum of money, &c.’

We first treat of special assignations, or of rights to a particular subject. The stile of an assignation to a debt, or sum of money due by a moveable bond, which is a voluntary right, may be known from what is above set down; only it is to be noticed, that if two or more distinct bonds are to be assigned, the stile of the assignation, in the *first* place, mentions the sums in the first bond; and, *next*, the sums in the second bond, and so forth with the rest; and thereafter is subjoined, ‘ In and to the foresaid two (*three or more*)
 ‘ bonds themselves, with all that has followed,
 ‘ or may follow thereupon.’

An assignation of a debt secured by a legal diligence, or liquid by a personal decret, is thus.

‘ **B**E it known, &c. me A. Forasmuch as up-
 ‘ on ——— I obtained decret before
 ‘ ——— against B. decerning and ordaining him
 ‘ to make payment to me of the sum of, &c.
 ‘ which was resting by him to the deceast —
 ‘ and now to me as executor *dative* decerned
 ‘ and confirmed to him, and that for divers
 ‘ reasons and causes specified in the said
 ‘ decret, as the same, and letters of horn-
 ‘ ing raised thereupon, at more length pro-
 ‘ port; and seeing that I am resting to —
 ‘ the

the sum of, &c. with certain annual rents
 and expences, conform to a bond granted
 by me as principal, and ————— as cautioner
 for me to him thereupon, and that I
 am most willing that the said, &c. should be
 paid of the said principal sum and annual
 rents thereof resting unpaid, and thereby
 the said, &c. relieved of his said caution-
 ry; *therefore, wit ye me* to have made, con-
 stituted and ordained, and, by these pre-
 sents, make, &c. the said, &c. his heirs
 and donatars, under the reservation and
 declaration always after mentioned, my
 very lawful assignies in and to the foresaid
 decret, sums above specified therein con-
 tained, letters of horning, and others, rai-
 sed, or to be raised thereupon, executions,
 indorsations and registrations thereof, with
 all that has followed, or may follow upon
 the same; and to all action, instance or exe-
 cution, competent, or that may be compe-
 tent, by virtue thereof, surrogating and
 substituting, by these presents, the said, &c.
 under the reservations and declarations al-
 ways after mentioned, in my full right,
 title and place of the premisses for ever,
with full power to the said, &c. and his a-
 bove mentioned, to ask, &c. and to call
 and pursue therefor, either in my name
 or in their own, as they shall think expedi-
 ent; by putting of the said decret and let-
 ters raised thereupon to execution, as ac-
 cords

cords of the law, and to give acquittances
 and discharges thereof, transact, &c. and ge-
 nerally, &c. which assignation, &c. to war-
 rant, &c. *likeas* I have instantly herewith
 delivered, &c. *with* this provision and decla-
 ration always, that how soon the said, &c.
 or his forefairs, shall obtain payment of
 the sums above mentioned, hereby assign-
 ed, that immediately thereafter they shall
 be holden to make payment to the said, &c.
 or his above mentioned, and purchase, pro-
 cure, repeat and deliver to me, and my
 forefairs, the bond granted to the said, &c.
 with a sufficient discharge thereof, to be
 kept and used by me and my forefairs, at
 our pleasure, in all time coming. Registration, &c.

A bond by the assignee to the cedent, men-
 tioning the end for which the assignation is
 granted, and obliging himself according to the
 tenor of the above written provision and de-
 claration, is more for the cedent's security
 and interest, than a declaration in the assigna-
 tion, which is not in the keeping, or at the
 command of the cedent.

Assignations of decreets for payment of mo-
 ney are in the same order and stile with these
 of bonds for borrowed money, *to wit*, the
 sums are always first mentioned and assigned,
 and then the decreets.

In the assignation of an heritable bond,
 which contains a clause of infeftment, two
 cases

cases are to be considered; the first is, if the cedent be not infest, in which case the assignation is in the form and stile of an assignation to a moveable bond, with this difference, that the bond is narrated, and the procuratory of resignation and precept of fassine are expressly assigned, and the power is ‘ to purchase and procure himself (*the assigney*) infest and seized in the foresaid annualrent, by virtue of the procuratory of resignation or precept of fassine contained in the foresaid bond, and the present assignation of the same;’ and in the power to grant discharges you must add, ‘ Power to grant renunciations also.’

The next case is, if the cedent is infest, either upon the precept of fassine in the bond, or upon a charter of resignation, then the right is in the stile of a disposition of lands, for which we refer you to that part which treats of the stile of real rights and conveyances.

If real diligence against lands, by adjudication, or the like. has been deduced for security of the debt, in the conveyance the two former cases are to be considered; for, if no infestment has followed upon the adjudication, the assignation and disposition is thus.

‘ **BE** it known, &c. me *A. Forasmuchas,*
 ‘ *(Here narrate the bond in common form,*
 ‘ *after which narrate the decreet of adjudica-*
 ‘ *tion, and if there were an arrestment, decreet,*
 ‘ *of forthcoming, burning, suspension, and decreet*
 ‘ *of suspension, these must be also narrated)* And
 ‘ *now seeing,* that *B.* hath made payment to
 ‘ me of a certain sum of money, equivalent to
 ‘ the sums hereby assigned for granting the
 ‘ assignation underwritten, wherewith I hold
 ‘ me well contented and satisfied, and exoner,
 ‘ quit-claim, and simply discharge him, his
 ‘ heirs and executors, of the same, renouncing
 ‘ all exceptions in the contrary for ever; *there-*
 ‘ *fore, wit ye me* to have sold, annalzed and
 ‘ disposed, *likeas,* &c. to the said *B.* his heirs
 ‘ and assignies whatsoever, all and whole the
 ‘ foresaid lands of ——— with houses, &c.
 ‘ lying and bounded in manner above men-
 ‘ tioned, together with all right, title, inte-
 ‘ rest, claim of right, property and possessi-
 ‘ on, petitory and possessory, that I, my heirs
 ‘ or assignies, had, have, or anyways may
 ‘ have, claim, or pretend thereto, or to any
 ‘ part thereof, in time coming. *And farther,*
 ‘ *wit ye me* to have made and constituted,
 ‘ *likeas,* &c. the said *B.* his heirs and dona-
 ‘ tars, (*secluding* his executors) my very
 ‘ lawful and irrevocable cessioners and assign-
 ‘ nies in and to the foresaid principal sum
 ‘ of 2500 merks, and 200 pounds of liqui-
 ‘ date

' date expences; and to the annualrent of said
 ' principal sum bygone, resting unpaid since
 ' the term of ——— and in time coming during
 ' the not-payment thereof; and in and to the
 ' foresaid bond, letters of inhibition and ar-
 ' restment raised thereupon, executions there-
 ' of, and to the foresaid decreet of adjudica-
 ' tion; and likeways to the foresaid decreet
 ' of forthcoming, and decreet of multiple-
 ' poinding and preference, letters of horning,
 ' and other letters and diligence done there-
 ' upon, executions, indorsations, and registra-
 ' tions thereof, with all that has followed or
 ' may follow thereupon, *surrogating, &c. with*
 ' *power* to him and his foresaids, by virtue of
 ' the said decreet of adjudication, and this my
 ' assignation thereof, to purchase and procure
 ' themselves to be duly and lawfully infest
 ' and seised in the lands and others above dis-
 ' poned; and also to ask, crave, &c. and to
 ' grant discharges, &c. and, if need be, to
 ' call and pursue therefor, either in my name
 ' or their own, as they shall think expedient,
 ' and to use all manner of legal diligence for
 ' recovering payment thereof, compone, &c.
 ' and generally, &c. which disposition and as-
 ' signation I bind and oblige me, and my fore-
 ' saids, to warrant, &c. *likeas* I have instant-
 ' ly herewith delivered to him the extract of
 ' the foresaid bond, with the letters of inhi-
 ' bition and arrestment raised thereupon, with
 ' the

‘ the extracts of the said decreets of adjudication, and for making forthcoming and of preference, all to be kept and used by him and his foresaids, as their own proper evidents at their pleasure in time coming.’ Registration for preservation, and letters of horning, if need be.

Besides the clauses contained in this assignation of a decret of adjudication, I have seen an assignation of the mails and duties of the lands adjudged, for all years since the decret, and in time coming. I have observed some are not in use to dispoise the lands adjudged, as in the case foresaid, but only the decret, which I think is not very regular; for a decret of adjudication is a legal disposition of lands and other subjects adjudgeable; and the adjudger, when not infest, must convey his right in the same form and stile as one transmits a disposition of lands wherein he was not infest, and the power was, ‘ with power to him, and his above written, by virtue of the foresaid decret of adjudication, and this my assignation thereto, to purchase and procure the precepts *forth of our severaign Lord’s chancery*, and thereby to obtain themselves duly and lawfully infest and seised in the lands, teinds, and others above mentioned, and to uplift and receive, and, if need be, pursue for the foresaid bygone mails and duties.

But

But if the disponent be infeft in the lands adjudged, either the legal reversion competent to the debtor is not expired, and then the disposition has a narrative of all the diligence, and, after the dispositive clause, the ordinary real clauses, as obligation to infeft, procuratory of resignation, precept of sale, &c. are inserted in the common form, as will be shewn in the title of dispositions; or the legal reversion is expired, and then the disposition has no narrative, and is like that made by an irredeemable proprietor of lands, of which in another treatise.

Assignations and dispositions of moveable goods, directly, that is, without being a security, or a corroboration of a liquid debt, as are rights to corns, cattle, horse, nolt, sheep, &c. are expressed in this manner.

BE it known, &c. me *A.* for a certain sum of money paid and delivered to me by *B.* to have sold and assigned, *likeas* I, by these presents, sell, assign and dispone, to and in favour of the said *B.* his heirs, executors or assignies whatsoever, all and sundry my insight-plenishing, goods and gear pertaining to me, upon the ground of the lands of ——— that is to say, 60 sheep young and old, ten oxen, ten kine, six yeld nolt, three horses, the sowing of twenty bolls of all sorts of corn, such as wheat, bear, oats, and pease, upon the half of the same lands

Z 2

‘ of

' of ——— laboured by me this instant crop
 ' and year 1764. together with all right, &c.
 ' surrogating, &c. with full power to him and
 ' his foresaids presently to enter, to the peace-
 ' able possession of the said horse, nolt, sheep,
 ' cows, sowing, and to use and dispose there-
 ' upon at their pleasure; and generally, &c.
 ' use and. exerce concerning the intromission
 ' with the foresaid corns, cattle, goods, gear,
 ' siklike, and as freely, &c.'

An assignation to household plenishing is
 thus:

' Be it known, &c. me *A.* for the love,
 ' favour and affection that I have and bear to
 ' *B.* and for his great diligence and constant
 ' pains in my business, and for other onerous
 ' and weighty causes moving me, to *have* sold
 ' and disponed, &c. *likeas*, &c. to the said *B.*
 ' his heirs and executors, under the reserva-
 ' tion after specified, my whole insight-plenish-
 ' ing within my dwelling-house in ——— con-
 ' form to a particular inventory thereof, of
 ' the date ——— which is holden as repeated
 ' and expressed herein, *reserving* always to me
 ' my liferent-right and possession of the fore-
 ' said plenishing during all the days of my
 ' lifetime, with power to the said *B.* and his
 ' foresaids, presently to take possession of the
 ' said plenishing, and, after my decease, to
 ' intromit with and away take the same, and
 ' dispose thereupon at their pleasure; and, if
 ' it shall be necessary, to pursue for delivery

' to

' to them thereof, before whatsoever judges
 ' competent, as accords of the law, and gene-
 ' rally to do every other thing requisite for
 ' establishing the right thereof in their per-
 ' son, siklike, and as freely, as I might have
 ' done myself before the making this present
 ' disposition and assignation. *Which* dispo-
 ' sition and assignation I bind and oblige
 ' me, my heirs and executors, to warrant to
 ' the said *B.* from my own proper fact and
 ' deed allenarly. *And, for farther security*
 ' thereanent, I have instantly, with my own
 ' hands at the subscribing hereof, given pos-
 ' session to the said *B.* of the foresaid plenish-
 ' ing, reserving only my own lifetime thereof,
 ' as is before expressed.'

From the variety occasioned by the subject
 matter assigned, it is observable, that the clause
 which gives power to use and dispose upon is
 various, according to the special nature of the
 thing, since every subject or matter of com-
 merce hath its proper use, and is not fit for all
 uses: So that the stilist and writer, in convey-
 ing this power of using, must express himself
 in habile and proper terms.

Thus, in an assignation and disposition of an
 adjudication, whereupon no infestment has fol-
 lowed, beside the ordinary *power to ask, crave,*
 &c. there is a *power, by virtue of the said de-*
creet of adjudication, and assignation thereof
to the assigney, to purchase himself infest and
Z 3
seised.

seised in the lands adjudged; and in an assignation to mails and duties given for farther security, the power, beside the common, is, to uplift and discharge the same mails, and to pursue the tenants therefor, upon decret already recovered, or to be recovered by the assigney, for payment thereof, and to do all diligence necessary.

Not only things, but rights, writs, and special clauses in them, and the powers and faculties competent thereby, are assigned, and no direct mention is made of their effect or product, tho', without this fruit, which increases our patrimony and estate, it is but a very barren conveyance. Such as an assignation to clauses in tailzies, or other writs, whereby sums in a certain event become due to the cedent. Of this kind take the following example.

Assignation of Clauses in a Tailzie, and of Provisions therein, that were conceived in favour of the Cedent.

‘ **B**E it known, &c. me *A.* son and heir
 ‘ served and retoured to the decessit *B.*
 ‘ *Forasmuch* as there was a contract and agree-
 ‘ ment made upon ——— betwixt the decessit
 ‘ *A.* my grandfather, and the said *B.* then
 ‘ designed, &c. with consent of ———

‘ and

‘ and the said ——— for themselves, with
 ‘ consent of my said father and grandfather
 ‘ on the other part; by virtue whereof, and
 ‘ for the onerous causes at length therein
 ‘ expressed, the said C. with consent foresaid,
 ‘ bound and obliged him, his heirs and suc-
 ‘ cessors, to make due and lawful resignation
 ‘ of all and whole, the lands and barony of
 ‘ ——— and others particularly under writ-
 ‘ ten, *viz. &c.* all lying, *&c.* in the hands of
 ‘ the king’s majesty, or his highness’s suc-
 ‘ cessors, and others the said C. his immediate
 ‘ lawful superiors thereof, in favour, and for
 ‘ new investment of the same, to be made
 ‘ and granted by the said superiors, or their
 ‘ successors, to the said C. and his heirs male,
 ‘ then lawfully to have been begotten of his
 ‘ own body; which failing, to the said B. my
 ‘ father, his heirs male and successors, in
 ‘ the right of the living of L. heritably, in
 ‘ due and competent form. As also, the said
 ‘ C. with consent foresaid, did thereby con-
 ‘ tract, will and ordain, that, after him, all
 ‘ tacks and rights of teinds, parsonage and
 ‘ vicarage, of the lands, barony, and others
 ‘ above written, with the pertinents, then per-
 ‘ taining to him, or that should be acquired
 ‘ by him at any time thereafter, with the
 ‘ reversions of all wadsets, annualrents, and
 ‘ other burdents being thereupon, or upon the
 ‘ foresaid lands, barony, and others above
 ‘ written, or any part thereof, and all right
 ‘ of

of redemption of the same, should pertain
 and belong to the said heirs male lawfully
 to be begotten of the said C. his own body;
 which failing, to the said B. my father, his
 heirs male, and successors, to the said li-
 ving of L. as well as the heritable right of
 the said lands, barony, and others above
 written, according to the said infestment of
 tailzie, and provision above specified to fol-
 low thereupon. And for that effect, the
 said C. with consent foresaid, was to make,
 constitute and ordain his foresaid heirs
 male, and of tailzie and provision, above de-
 signed, to be contained in the foresaid in-
 festment, his undoubted and irrevocable ces-
 sioners and assignies, in and to all and sun-
 dry tacks, assedations, assignations, trans-
 lations, dispositions, and other writings and
 securities whatsoever, made and granted to
 his said umquhile father, or to any other
 his predecessors, or obtained by him or them,
 or to have been obtained, and made to him
 thereafter, of, upon, or concerning the
 teinds, parsonage and vicarage, of the said
 lands, barony, and others above written,
 with the pertinents; and to all reversions,
 contracts, bonds, promises and conditions
 of reversions, made and granted to the said
 C. his said umquhile father, or others his pre-
 decessors, authors, cedents, or others from
 whom he had right, for redemption of
 the lands, barony, and others above writ-
 ten,

' ten, or any part thereof, or of any wadset,
 ' annualrent, apprising, or other burden be-
 ' ing thereupon, to the effect, that, after the
 ' said C. his decease, the heirs male then to be
 ' begotten of his own body; which failing, the
 ' said B. his heirs male and successors foresaid,
 ' might succeed and have right to the teinds,
 ' parsonage, and vicarage, of the lands, baro-
 ' ny, and others above specified, in manner
 ' mentioned in the said contract; whereby it
 ' is provided and declared, that it should not
 ' be leifome to the said C. nor his heirs male
 ' foresaid, either to break the said tailzie, or
 ' to ontake upon the said lands, barony, and
 ' others above written, and teinds thereof,
 ' any sums of money, except 5000 merks.
 ' *Likeas*, the said C. with consent foresaid,
 ' bound and obliged him, and his foresaids,
 ' neither to alter nor break the said tailzie, nor
 ' to ontake any greater debt upon the said
 ' living than the sum foresaid. And in case it
 ' should happen the said C. and his heirs male,
 ' then lawfully to have been begotten of his
 ' own body, to fail, or to do in the contrary,
 ' either by altering or breaking of the said
 ' tailzie, or ontaking of any sums of money,
 ' more than the sum foresaid; upon the fore-
 ' said lands, barony, and living of — then,
 ' and in that case, the said C. and his heirs
 ' bound and obliged him, and them, to con-
 ' tent and pay to the said B. his heirs male
 ' and successors, the sum of 10,000 merks mo-
 ' ney.

' ney foresaid, immediately after the said
 ' C. or his heirs shall contraveen and do in
 ' the contrary thereof, and the said failzie
 ' to be received by way of exception or re-
 ' ply, without any declarator, till the sum
 ' was paid. And that all altering or break-
 ' ing of the said tailzie, and farther burden-
 ' ing of the foresaid living, more than the
 ' sum above written, and all securities to be
 ' made thereanent, to be null, and of none
 ' avail, force nor effect, as the said contract
 ' more fully bears. *And now seeing*, that
 ' ————— hath made payment to me of a
 ' certain sum for granting of the right of as-
 ' signation underwritten, wherewith, &c.
 ' *therefore, wit ye me*, as son and heir male
 ' foresaid, served and retoured to the said de-
 ' cease B. my father, to have made and con-
 ' stituted, *likeas*, &c. the said ——— his heirs
 ' and donatars, my very lawful cessioners and
 ' assignies in and to the foresaid contract,
 ' and whole clauses and obligements con-
 ' tained therein, conceived, or that may be
 ' interpreted in my favour, and specially,
 ' without prejudice of the generality foresaid,
 ' in and to the said sum of 10,000 merks, and
 ' whole annualrents and profits thereof, if
 ' any shall be found due by law, as well of
 ' all years and terms bygone resting unpaid,
 ' as in all time coming during the not-pay-
 ' ment thereof, and in and to all actions
 ' and processes intended at my instance in the
 ' said

' said matter, and in and to the whole acts
 ' and interlocutors, minutes of process and
 ' dispute, if any be made thereupon, and to
 ' the letters of inhibition raised at my in-
 ' stance in the said matter, executions, indor-
 ' sations and registrations thereof; and to all
 ' action and execution competent, or that
 ' may be competent to me thereanent; *sur-*
 ' *rogating and substituting* the said — in my
 ' full right and place of the premisses for e-
 ' ver, *with power* to him, or his forefairs, to
 ' prosecute and follow forth all actions alrea-
 ' dy intended and depending at my instance
 ' in the said matter, and to obtain decreets
 ' therein, and to use all manner of legal di-
 ' ligence, either at my instance or his own,
 ' as he shall think expedient, for procuring
 ' the implement of the foresaid contract, *com-*
 ' *pone, &c. Which* right and assignation, &c.
 ' to warrant to the said ——— and his fore-
 ' fairs, from all facts and deeds done by my
 ' said deceased father, or to be done by my-
 ' self, his or my heirs or executors, at any
 ' time bygone or to come, prejudicial here-
 ' to allenarly; *excepting* and reserving always
 ' forth and from this present warrandice, any
 ' consent that was given by me to the dispo-
 ' sition of the said lands of, &c. (*being a small*
 ' *part of the lands tailzied*) with their perti-
 ' nents, granted by — in favour of —
 ' which consent shall noways infer nor im-
 ' port

‘ port any contravention of the present war-
 ‘ randice, but is expressly excepted therefrom.
 ‘ *Likeas* I have instantly herewith delivered
 ‘ to the said ——— one of the subscribed dou-
 ‘ bles of the said contract, with the summons
 ‘ raised thereupon at my instance, against —
 ‘ now of ——— eldest lawful son and heir male
 ‘ to the said deceased C. his father, with the let-
 ‘ ters of inhibition raised thereupon, and executi-
 ‘ ons thereof, to be kept and used by him
 ‘ and his foresaids, as their own proper writs
 ‘ and evidents, at their pleasure, in time co-
 ‘ coming.

Among this sort I may place assignations by
 tenants of the tacks set to them by their ma-
 sters, whereof the form is thus ; ‘ Be it
 ‘ known, &c. me ——— *Forasmuchas*, &c.
 ‘ (*Here narrate the tack*) And seeing B. hath
 ‘ made payment to me, &c. *therefore* to have
 ‘ made, constituted, and ordained, &c. assign-
 ‘ nies in and to the said tack and assedation,
 ‘ during the whole years and terms thereof
 ‘ yet to run, and to all clauses and oblige-
 ‘ ments therein contained, profits and emolu-
 ‘ ments that may arise therethrough, and in
 ‘ and to all action, &c. *surrogating*, &c. with
 ‘ power to the said B. to occupy and possess
 ‘ the said lands with their own goods, or to
 ‘ set them to tenants, as they shall think most
 ‘ expedient, and to intromit with and uptake
 ‘ the mails, farms, profits and duties thereof,
 ‘ during all the years and terms mentioned in
 ‘ the

‘ the said affedation, and yet to run, they pay-
 ‘ ing the mails and duties contained in the
 ‘ same to the said — at the terms therein
 ‘ expreffed; and alfo to ufe the said tack and
 ‘ affedation, fliklike, and as freely, in all things,
 ‘ as I might have ufed the fame myfelf, be-
 ‘ fore the making of this affignation, &c.

Affignation of a Liferent-Right.

‘ **I** A. for divers onerous caufes and confide-
 ‘ rations moving me, by thefe presents,
 ‘ make and constitute B. my lawful fon, and
 ‘ his heirs, executors and affignies, my ve-
 ‘ ry lawful, undoubted and irrevocable cefsi-
 ‘ oners and affignies, in and to my liferent-
 ‘ right of the fums of money after fpecified,
 ‘ and annualrent thereof, whereunto I am pro-
 ‘ vided during my lifetime, conform to the
 ‘ bonds after mentioned, granted by the per-
 ‘ fons after nominated, every one of them for
 ‘ their own parts, as is after divided, viz. the
 ‘ fum of — as principal, and the fum of
 ‘ — as liquidate expences, contained in a
 ‘ bond granted by — of — for my life-
 ‘ rent-ufe allenarly, and to the said — his
 ‘ heirs, executors or affignies, in fee, of the
 ‘ date — (and fo forth of all the reft of the
 ‘ bonds) and in and to my liferent-right of the
 ‘ ordinary annualrent of the said principal fums

A 2

‘ of

' of all years and terms bygone resting un-
 ' paid, and siklike of all years and terms to
 ' come during the not-payment thereof, con-
 ' form to the foresaid bonds, and in and
 ' to the same bonds, whole clauses, &c.
 ' and to all action, &c. *surrogating*, &c.
 ' with full power, &c. (*The other clauses of an*
 ' *assignation in common form*) *Likeas* I have
 ' delivered to the said B. so many of the said
 ' bonds as I have in my custody, to be kept,
 ' &c.'

Thus much of assignations to particular sub-
 jects; it remains that we treat of general assign-
 nations, or rights of all the cedent's debts and
 goods whatever, without mentioning any kind,
 such as the right of moveables, in place of a
 testament, in the following example.

' Be it known, &c. me E. for the love, fa-
 ' your and affection which I have and bear to
 ' A. my eldest lawful son, and for the better
 ' enabling him to make payment of such debts
 ' and sums of money as I am presently resting,
 ' or that shall happen to be resting by me the
 ' time of my decease, and for the defraying
 ' the expences that may happen to be wared
 ' out during my sickness, and upon my fune-
 ' rals, *to have* made, constituted and ordain-
 ' ed, *likeas* I, by these presents, under the pro-
 ' visions, reservations and conditions after men-
 ' tioned, make, constitute and ordain the said
 ' A.

' his heirs and executors, my cessioners and
 ' assignies, in and to all debts, sums of mo-
 ' ney, goods, gear, mails and duties of lands,
 ' houses, and others, household-plenishing,
 ' clothes, woollen and linen, and all other fur-
 ' niture within my said dwelling-house, or
 ' without the same, pertaining, or which, at
 ' any time hereafter, during my lifetime, and
 ' at my death, shall happen to pertain, belong,
 ' or be addebted to me, and to all bonds, con-
 ' tracts, accompts, tickets, decreets, sentences,
 ' and other writs and evidents granted or re-
 ' ceived by me at any time bygone, or to
 ' come, during my said lifetime: And, with-
 ' out prejudice of the generality foresaid, in
 ' and to the sum of ——— addebted by ———
 ' conform to his bond granted thereanent, da-
 ' ted ——— and in and to (*Here take in the rest*
 ' *of the bonds*) and to the mails and duties
 ' resting by ——— for his dwelling house in ———
 ' possessed by him, and pertaining to me; *sur-*
 ' *rogating and substituting* the said A. and his
 ' forefaids, under the provisions and reserva-
 ' tions after mentioned, in my full right and
 ' place of the premisses for ever; dispensing
 ' with the generality, and admitting and de-
 ' claring the same to be as valid, effectual and
 ' sufficient, to all intents and purposes, as if
 ' each debt, and the whole household-plenish-
 ' ing, goods, gear, and others hereby assigned,
 ' were particularly and expressly herein named

and inserted; *reserving* always to me my life-
 rent of the sums of money, goods, gear,
 and others above assigned, during all the days
 of my lifetime; *reserving* also power and li-
 berty to me, at any time during my lifetime,
 not only to uplift, discharge, assign, and o-
 therways dispose upon and make use of the
 sums of money, and others particularly and ge-
 nerally above mentioned, *but also* to affect
 and burden this present assignation, sums,
 and others hereby assigned, with such lega-
 cies, gifts and provisions, as I shall think fit
 to nominate and appoint, in a writ to be sub-
 scribed with my hand at any time hereafter
 in my lifetime, and, failing such a writ, or
 in case thereof, the superplus of the sums of
 money, and prices of the plenishing, and o-
 ther goods and gear above assigned, than
 what pays the expences during my sickness,
 and upon my funerals, and all other debts,
 if any be, that shall happen to be resting at
 my death, to be applied by him to himself,
 and for his own use; and, in case the said
 debts, funerals, and other expences, with the
 legacies to be contained in the said paper a-
 part, shall exceed the moveables hereby as-
 signed, the said A. and his forefairs, are to
 be no farther liable than for what he shall re-
 ceive by virtue of this right and assignation,
 and the remainder to affect the houses and
 others above mentioned, in the first place,
 be-

before any of the legacies or provisions contained in the said writ; *with full power* to the said *A.* and his foresaids, under the reservations and provisions above mentioned, immediately after my decease, to ask, crave, receive, intromit with, and uplift the sums of money particularly and generally above assigned, and to roup, sell, and otherways dispose upon the household-plenishing, and other goods and gear above mentioned, and to apply the prices thereof as is above provided. And that this present right and assignation may be the more effectual, I, by these presents, revoke, recal, and annul all former assignations, rights and dispositions of the premisses, or any part thereof, granted by me to any person or persons in trust, and otherways, preceeding the day and date hereof: *And likewise* I, by these presents, annul and discharge all former testaments, latter-wills, provisions and legacies, prejudicial hereto, excepting allenary the provisions contained in the writs and papers subscribed by me upon the day and date hereof, which yet are to affect the moveables hereby disposed. *And farther*, I hereby declare, that notwithstanding this present assignation is to remain with me, and in my custody, during all the days of my lifetime, and to be made use of only after my decease, yet the same shall be as valid, effectual and sufficient, to all intents

‘ and purposes, and if it was a delivered evidence at the date hereof.’ Registration for preservation.

But, for a singular pattern, I here give you the copy of the general assignation of all sums, &c. made by Sir *John Nisbet* of *Dirletoun*, advocate to king *Charles II.* a learned lawyer, to his heirs of tailzie, with provisions in favour of his other kindred and friends, which was formed by *James Hay* of *Carriber*, an experienced and knowing writer to the signet.

‘ **B**E it known, &c. me *A. Forasmuch* as I have thought fit to settle and provide my estate and lands, teinds and others, failing heirs of my own body, in manner contained in a paper of the date of these presents; and seeing it is fit, that, in the case foresaid, I should provide likewise my other estate, wherewith it hath pleased the Lord to blefs me, in money and bonds, or otherways, and, upon serious and good considerations, I have resolved to provide the same in manner underwritten; therefore, to have disposed, transferred and assigned, failing heirs male of my own body, and with and under the conditions after specified, to and favour of *B.* the heirs male of his body, which failing, &c, all and whatsoever debts and sums of money, heritable or moveable, due to me, by whatsoever
‘ ever

ever person or persons, by bond, contract,
 infestment, or without the same, or any o-
 ther manner of way, pertaining presently to
 me, or which shall hereafter pertain to me
 the time of my decease, and which are
 or shall be contained in a book containing
 the note and list of bonds, and other re-
 ceipts, whereby any sum or sums of mo-
 ney is due to me, or which shall be con-
 tained in an inventory which shall be made at
 any time, of the debts, bonds, and other
 writs, whereby the same are, or shall be
 due, holding the generality foresaid to be
 as sufficient as if the whole particulars were
 expressly enumerated and set down: *Likeas*
 I, by these presents, assign, transfer and dis-
 pone, in the case foresaid, to the said B. and
 the heirs of tailzie and provision above spe-
 cified, all and fundry the said sums of mo-
 ney, and debts heritable and moveable,
 presently due and pertaining to me, by what-
 soever person or persons, at any time here-
 after, with the bonds, contracts, infest-
 ments, and all other rights granted to me
 or my cedents thereupon: *Providing* always,
 likeas, &c. that it shall not be lawful to the
 said B. and other heirs above specified, to
 uplift and dispose of the said sums of mo-
 ney, pertaining, or which shall pertain to
 me, or to employ the same, or any part
 thereof, for any other use than the uses
 under

' under-written; and if the said B. or any of
 ' the heirs above specified, shall contraveen
 ' this provision, the contraveener, for him-
 ' self and the heirs of his body, shall lose
 ' their right to the sums of money and debts
 ' above assigned, and the same shall pertain
 ' to the next person having right to succeed
 ' by the foresaid provision and entail, who
 ' shall be liable to employ the said sums in
 ' manner following; *that is to say*, my debts
 ' being satisfied, which are presently due by
 ' me, or which shall be due the time of my
 ' decease, and the provisions and oblige-
 ' ments after specified, in favour of the per-
 ' son under written, my friends and relations
 ' being likewise satisfied, the residue of my
 ' estate in money shall be employed in the
 ' purchase of well-holden lands, and teinds
 ' of the same, where they may be most con-
 ' veniently had, and in special in *East* or *Mid-*
 ' *Lothian*, or the *Merse*, as near to my other
 ' estate as can be, effecting, and equivalent
 ' to the said free residue of my estate in
 ' money; and, in case it shall be necessary
 ' and expedient to uplift any of the said sums
 ' before there can be any occasion for pur-
 ' chase, then, and in that case, it is provided;
 ' that such sums as shall be uplifted shall be re-
 ' employed always with the burden of the
 ' provision foresaid; so that the same shall not
 ' be uplifted and employed for any other use
 ' than is above mentioned. *And farther*, out
 ' of

of the tender respect I have to the memo-
 ry of ——— my worthy father, to whose
 great care and affection, and breeding me
 in virtue and letters, I acknowledge, that,
 under GOD, I owe the estate that GOD
 has blessed me with, and seeing I have no
 male children of my own body to repre-
 sent me, and my only daughter having got-
 ten from me a competent tocher, I have
 been careful that she and her children, if
 there should be any, should be well and
 plentifully provided by her contract of
 marriage, and infestment following upon
 the same; *and in regard* that, after the de-
 cease of my father, ——— his second daugh-
 ter being bestowed in marriage with the
 decest — I did obtain for him, by my moyen,
 a place in — and in these places, he having
 acquired a considerable estate, he did bestow
 his daughters, with my sister, creditfully,
 and did give with them large portions and
 tochers, to which they got considerable ad-
 ditions of his means after his decease, so
 that their husbands and they are in a very
 good condition; *therefore*, for the better
 provision and help of my said father his o-
 ther grandchildren and great grandchil-
 dren after mentioned, I bind and oblige me,
 and the said B. and the other heirs of tailzie
 and provision foresaid, *likeas*, by accepting
 this present right, they shall be bound and
 obliged to have in readiness, against the first
 term

term of *Whiesunday* or *Martinmas* after my
 decease, the sums of money after mention-
 ed *respective*, extending together to the sum
 of 50,000 merks, to be employed for; and
 towards the purchase of land esseiring to the
 said sum, to myself, and to the said *B.* and
 my said other heirs of tailzie and provision;
 and thereafter to be given and disposed by
 my foresaids, to be holden of them, *viz.*
 (*There was the division of the sums to his*
friends) which sums are given and pro-
 vided by me, to the effect that they may
 be employed upon land in manner fore-
 said, and no otherways. *Likeas*, I bind and
 oblige me and my foresaids, in case I have
 no heirs male of my own body the time
 of my decease, to employ the said sum of
 20,000 merks for ——— and upon the pur-
 chase and acquiring of lands esseiring and e-
 quivalent to the foresaid sum, to myself and
 my foresaids; and, the same being purcha-
 sed, to give and dispone the said lands and
 teinds thereof, if the same be acquired
 therewith, to the said ——— and the heirs
 of his body; which failing, to his other
 heirs *successive*, descending always of the
 said ——— my father, the eldest always;
 if female, being preferred, and succeeding
 without division; which all failing, to return
 to my family, and my heirs of tailzie and
 provision foresaid, to be holden of me, or
 my foresaids, feu or blench, for payment of
 forty

' forty pounds *Scots* of feu-duty yearly, and
 ' with and under the provisions and conditi-
 ' ons under written. *Likeas*, it is provided,
 ' that the said lands shall be acquired, and the
 ' right thereof taken to the said *B.* and his
 ' forefaids, and that they shall be disposed by
 ' them to the said — and his forefaids, with
 ' the conditions and provisions contained in
 ' the bond of tailzie, of the date of these
 ' presents, and in the assignation above spe-
 ' cified in favour of the said *B.* and his fore-
 ' faids, for securing and preserving the tailzie
 ' and course of succession forefaid; which
 ' provisions and clauses irritant are holden as
 ' expressed, as they are set down expressly or
 ' relatively, and shall be inserted in the rights
 ' and infeftments to be granted to the said *B.*
 ' and his forefaids, of the lands to be pur-
 ' chased; and likewise in the rights and in-
 ' feftments to be granted by the said *B.* or
 ' his forefaids, to the said — and his fore-
 ' faids: And it is likewise declared, that the
 ' lands so to be purchased for the said —
 ' shall be burdened with the liferent of the
 ' said — his mother, as to two third parts
 ' of the same, during her lifetime, and, in
 ' case she decease before her said husband,
 ' with the said — his liferent
 ' of the half of the said lands; which life-
 ' rents, to the said — and — re-
 ' spectively, are declared now, as if the said
 ' lands were purchased, and then as now, to
 ' be

‘ be reserved to them respectively. *And in like*
 ‘ *manner*, I bind and oblige me, and my fore-
 ‘ saids, in case I have no heirs of my own
 ‘ body the time of my decease, to employ
 ‘ the said sum of 20,000 merks above appoint-
 ‘ ed for the said ----- (*Here the clause immedi-*
 ‘ *ately above written was repeated in favour of*
 ‘ *the said ————— in the same very terms*
 ‘ *verbatim*) *There followed a common clause re-*
 ‘ *serving power to alter, etiam in articulo mor-*
 ‘ *tis, and a declaration that this right should be*
 ‘ *a valid evident, notwithstanding that the same*
 ‘ *be lying in the granter’s custody the time of his*
 ‘ *decease; after the witnesses names were in-*
 ‘ *serted, Sir John caused add this clause.* ‘ It is
 ‘ farther declared, that it is my intention,
 ‘ that the lands to be purchased and given to
 ‘ the grandchildren and great grandchildren
 ‘ of my father in manner above written,
 ‘ should be purchased and acquired in the
 ‘ shires of *East Lothian* or *Mid Lothian*, or
 ‘ the *Merse*, as near to my lands as can be con-
 ‘ veniently had. *Likeas* it is provided and
 ‘ declared, that, until occasion offer of any
 ‘ bargain or purchase for the said persons, and
 ‘ their forefaids respectively, the said ———
 ‘ and my other heirs of provision above spe-
 ‘ cified, shall be liable; *likeas*, by acceptation
 ‘ hereof, they shall be obliged to pay the an-
 ‘ nualrent of the sums respectively, from the
 ‘ first term of *Whitsunday* or *Martinmas* af-
 ‘ ter my decease, until the lands, to be pur-
 ‘ chased

‘ chafed in manner foresaid, be disposed to
 ‘ them respectively.’ Followed the subscrip-
 tion.

Under general assignations of moveables I comprehend rights to all casualties of superiority, because the extent of them is not in the conveyance defined and deteruined; such as,

*An Assignation of an Escheat, and Bonds
 fallen under Forfeiture.*

‘ **B**E it known, &c. me *A. Forasmuchas,*
 ‘ (Here narrate the gift of escheat) And
 ‘ now seeing that *C.* hath made payment to
 ‘ me of a certain sum of money for granting
 ‘ of the right and assignation under written,
 ‘ wherewith, &c. therefore wit ye me to have
 ‘ made and constituted, as I, by these pre-
 ‘ sents, &c. the said *C.* his heirs and dona-
 ‘ tars, my very lawful cessioners and assignies
 ‘ in and to the foresaid gifts of escheat, and
 ‘ all right that I have thereby to all goods,
 ‘ gear, moveable and immoveable, debts, tacks,
 ‘ steadings, rooms, possessions, acts, contracts,
 ‘ actions, obligations, assignations, debts, sen-
 ‘ tences, sums of money, jewels, gold, silver,
 ‘ coined and uncoined, insight-plenishing, and
 ‘ other goods and gear escheatable whatsoe-
 ‘ ver, which pertained formerly to the said *B.*
 ‘ the time of his being forfeited for the cau-

* ses above mentioned, or at any time since:
 * *And farther*, to have sold, assigned, trans-
 * ferred and disposed, as I, &c. to the said C.
 * and his forefairs, all and whatsoever bonds,
 * heritable and moveable, annualrents, wad-
 * sets, adjudications, apprisings, tacks and rights
 * of teinds, decreets, and other writs, evi-
 * dents and securities whatsoever, made and
 * granted to the said B. or any of his prede-
 * cessors, to whom he is apparent heir, or
 * nearest in kin, and all sums of money, prin-
 * cipal, annualrents, penalties, expences and
 * sheriff-fees contained therein, or due by vir-
 * tue thereof, together with the gift and as-
 * signation above mentioned given by —
 * to me of the same, and all that has followed,
 * or may follow thereupon; *surrogating and*
 * *substituting* — with power to — and
 * dispose upon the goods, gear, debts, sums of
 * money, and others, particularly and general-
 * ly above written, and, if need be, to call
 * and pursue therefor, and obtain decreets and
 * declarators, general and special, thereupon,
 * and to use all manner of legal diligence for
 * recovering thereof, compone, transact and a-
 * gree thereanent, and generally, &c. *Likeas*
 * I have herewith delivered to the said —
 * the gift above mentioned, to be kept, &c.
 * *And also.*

For this and the two following stiles, see
the note upon *page* 93.

An Affignation or Gift of Ward, Non-Entry and Marriage of an apparent Heir, as follows.

“ **B**E it known, &c. me *A.* superior of the lands and others under written, for divers good causes and considerations moving me, to have given, granted and disposed, as I, by these presents, give, grant, and dispoñe to *B.* his heirs or assignies, one or more, the ward and non-entry, mails, farms, kains, customs, casualties, profits and duties of all and whole ——— with the pertinents, lying, &c. of all years and terms bygone that the same has been in our hands, and ay and while the lawful entry of the said deceast *C.* his heirs or assignies thereto, being of lawful age, together with the marriage of his son and apparent heir to the said deceast *C.* his father, and, failing of him by decease unmarried, the marriage of any other heir or heirs, with the whole profits of the said marriage, with full power to the said *B.* and his foresaids, to ask, crave, receive, intronit with, and uptake the foresaid ward and non-entry; mails, farms, kains, customs, casualties, profits and duties of the lands and others above written, of all years and terms bygone, and to come, above re-
hearsed,

' heard, and profits of the said marriage, and
 ' thereupon to dispoſe at their pleaſure, and
 ' to occupy the foreſaid lands with their own
 ' plough and goods, or ſet the ſame to te-
 ' nants, during the ſpace of the ſaid ward and
 ' non-entry, and either of them, with court,
 ' plaint, herezeld, and with all and ſundry o-
 ' ther commodities, liberties, privileges, caſe-
 ' ments, and righteous portipents whatſoever,
 ' freely, quietly, well and in peace, without a-
 ' ny revocation or reſervation whatſoever.'

*An Affignation of a Gift of Non-Entry
 by a Truſtee in favour of a Wiſe, for
 whoſe Behoof this Gift was obtained,
 ſecluding the jus mariti by an expreſs
 Quality and Proviſion of this Convey-
 ance.*

' **B**E it known, &c. me *A. Forasmuchas,*
 ' (*Here narrate the gift*) And ſeeing my
 ' name was only intruſted in the ſame gift,
 ' for the behoof of *B.* and upon the expreſs
 ' condition that I ſhould denude myſelf there-
 ' of in manner after mentioned, *therefore wit*
 ' *ye me* to have aſſigned, transferred and diſ-
 ' poſed, as I, by theſe preſents, aſſign, &c.
 ' to the ſaid *B.* under the conditions, provi-
 ' ſions and limitations after rehearſed, the
 ' non-

' non-entry duties of the foresaid annual rent
 ' of ——— corresponding to the said sum of
 ' ——— and that of all years and terms bygone,
 ' whereunto I have right by the foresaid gift,
 ' and of all years and terms to come, ay and
 ' while the lawful entry of the righteous heir
 ' or heirs thereto, being of lawful age, toge-
 ' ther with the foresaid gift itself, process of
 ' declarator raised thereupon, and all action,
 ' instance and benefit competent, or that may
 ' be competent to me by virtue thereof, un-
 ' der the conditions, provisions and limitations
 ' after rehearsed; *to wit*, that the said B. is
 ' to have the only right to the foresaid non-
 ' entry duties, bygone and to come, for the
 ' aliment, subsistence, and entertainment of her
 ' and her children; with this expresse provisi-
 ' on, that B. her husband, and his creditors,
 ' shall be seclused from all right or interest
 ' therein *jure mariti*, or otherways, and shall
 ' have no power to assign or dispose thereup-
 ' on, nor do any deed to avert or misapply the
 ' said non-entry duties, for any other end or
 ' use, except for the aliment of the lady and
 ' her children. *And likewise*, in regard the
 ' foresaid non-entry duties and gift thereof are
 ' expressly designed and intended for the ali-
 ' ment and subsistence of the said lady and her
 ' children, *therefore* it is hereby provided and
 ' declared, that the same shall not be subject
 ' nor liable to any arrestments, or other legal

‘ diligence, at the instance of the husband’s
 ‘ creditors, for debts contracted, or that shall
 ‘ be contracted by him, declaring all such debts,
 ‘ and deeds, and diligences, that may be used
 ‘ thereupon, to be in themselves null and void.
 ‘ And that, notwithstanding thereof, the said
 ‘ B. shall have power and right to uplift and
 ‘ intromit with the said non-entry duties for
 ‘ the use above mentioned, and to grant dis-
 ‘ charges thereof by herself alone, without
 ‘ consent of her husband, which shall be a
 ‘ sufficient exoneration to the receivers. *And*
 ‘ it is farther hereby declared and provided,
 ‘ that, in case it shall happen the said lady to
 ‘ decease before her husband, in that case,
 ‘ what of the non-entry duties remain unup-
 ‘ lifted for the time shall pertain equally to her
 ‘ children, and their heirs (*secluding executors*)
 ‘ with full power to the said lady to ask, crave,
 ‘ receive, intromit with, and uplift the non-
 ‘ entry duties above assigned, and to dispose
 ‘ thereupon to the use above mentioned, com-
 ‘ pone, transact, and agree thereanent, and ge-
 ‘ nerally all other things concerning the pre-
 ‘ misses to do, use and exerce, that I might
 ‘ have done myself before the granting of this
 ‘ present assignation. *Which assignation* I bind
 ‘ and oblige me, my heirs, successors and execu-
 ‘ tors, to warrant to the said B. and her said
 ‘ children, and their foresaids, from all facts
 ‘ and deeds done and to be done, by me or my
 ‘ foresaids,

forefaids, at any time bygone or to come,
 prejudicial hereto allenarly. *Likeas*, I have
 instantly herewith delivered to the faid *B.*
 the forefaid gift, under the privy feal, with
 the fummons of declarator raifed thereupon,
 to be profecuted either in my name, or her
 own, as ſhe ſhall think fit.' Registration
 for prefervation.

Befides the variety ariſing from the three
 circumſtances above diſcourſed of, there is
 a fourth, which we may impute to the qua-
 lity of the right, or design of the parties:
 And that makes another diviſion of affigna-
 tions into *redeemable* and *irredeemable*. The
 irredeemable ones are theſe already treated of;
 the redeemable affignations are ſuch as are
 granted in ſecurity of a debt, or for relief of
 cautionry, ſo that, upon payment, the right
ipſo jure returns to the cedent, if he was not
 divested of the poſſeſſion, and by paction of
 parties there is a reverſion competent to the
 diſponer. For knowing of which ſort take
 an example of.

*An ASSIGNATION of Mails and Duties
 for farther Security of a Debt.*

BE it known, &c. me *A. Forasmuchas*
 (narrate the bond) And it being juſt
 and reaſonable that the faid *B.* be ſecured
 concerning the payment to her of the foreſaid
 annuity

' annuity of 2400 *merks* yearly, as well of
 ' such years and terms as are bygone resting
 ' unpaid, as in time coming; *therefore*, in
 ' corroboration of the said bond, and former
 ' securities granted to her for the same, and
 ' that without prejudice or derogation there-
 ' to, or to any diligence competent to follow
 ' thereupon, *sed accumulando jura juribus*,
 ' wit ye me to have assigned and disposed,
 ' *likeas* I, &c. to the said B. as much of the
 ' first and readiest of the mails, farms and
 ' duties of the lands and barony of ———
 ' and other lands, houses and acres belong-
 ' ing to me, lying, &c. due for the present
 ' year 1764, and in time coming, as will sa-
 ' tisfy and pay her the foresaid annuity, and
 ' termly penalties thereof in case of failzie,
 ' and that as well of all years and terms by-
 ' gone resting unpaid, as in time coming, du-
 ' ring her lifetime, *with full power* to her
 ' to uplift and receive the same, and to grant
 ' discharges upon the receipt thereof, in
 ' whole or in part, which shall be sufficient to
 ' the receivers, and, if need be, to call and
 ' pursue therefor, and to use all manner of
 ' legal diligence against the tenants and pos-
 ' sessors of the said lands, upon the decreets
 ' already recovered, or to be recovered by
 ' her for obtaining payment thereof. *It is*
 ' *always hereby declared*, that what the said B.
 ' shall recover, by virtue of this disposition
 ' and assignation, shall be compted in part of
 ' payment

payment of the foresaid annuity, and term-
 ly penalties thereof that are or shall be in-
 curred. *And for farther security thereanent,*
 I C. son to the said A. do hereby consent to
 this disposition and assignation; and declare,
 that whatsoever rights the said A. has grant-
 ed, or shall grant in my favour, shall no-
 ways prejudice, nor come in competition
 with the rights granted to the said B. for
 the annuity above written, during her life-
 time, nor what is resting thereof for by-
 gones, nor shall interrupt any diligence ne-
 cessary to be used at her instance thereanent;
which disposition and assignation, I the said
 A. do hereby bind and oblige me, my heirs
 and successors, to warrant to the said B. at
 all hands, and against all deadly; and that I
 shall keep the said lands possessed by suffi-
 cient tenants, who shall be able to pay their
 rents.' Registration.

When, for farther security, and in corro-
 boration of prior bonds, assignation is grant-
 ed and subjoined to the bond of corrobor-
 ation, whether of moveables or heritables, as
 infestments of annualrent, or the like, it is
 most proper that it contain, for the creditor's
 security, a declaration in his favour, that al-
 beit he be assigned thereto in corroboration,
 yet he should not be obliged to intromit there-
 with, or do diligence therefor, but if he plea-
 sed, and should not be obliged to compt but
 according to his actual intromission, and no far-
 ther.

Of

*Of ASSIGNATIONS in Trust for doing
Diligence.*

A Signations to sums of money, and securities therefor, being made to a common creditor for doing diligence, do not differ from the common assignments, but run *on verbatim*, in the same stile, neither make they mention of a backbond; and this is the most general way: But I have seen another way, which I look upon as more sure and convenient, and it is thus: The bond and other rights being narrated, the cause is, ‘ And
‘ seeing that *B.* who is also creditor to the
‘ said decest — is to intent action against
‘ — now of that ilk, son and apparent
‘ heir to the said — for certain sums of
‘ money due to himself, which may be done
‘ upon less expence, if the debt, contain
‘ ed in the bond above mentioned, was al-
‘ so assigned to him, that there be one dili-
‘ gence done for all; *therefore, &c. (an assigna-
‘ tion in common form)* surrogating the as-
‘ signey in the cedent’s full right and place
‘ of the premisses, to the effect above men-
‘ tioned, and the writs were to be used by
‘ him to the effect above written. *Provid-
‘ ing always*, that the said *B.* be holden and
‘ obliged, as he, by acceptation hereof, binds
‘ and obliges him, his heirs, successors and
‘ execu-

' executors, to repon and retrocess me in
 ' the right of the said bond, and denude him-
 ' self in my favour, of what diligence shall
 ' be done thereupon in his name; with war-
 ' randice from his own proper fact and deed,
 ' and the writs to be granted thereanent be-
 ' ing formed and exped upon my proper
 ' charges and expences, conform to a back-
 ' bond granted, or to be granted, by him to
 ' me thereanent.'

Sometimes one makes assignation to a per-
 son that he may use diligence upon the bond,
 and pursue for payment of the sums, which
 assigney gives a backbond to the cedent; and
 it happens, that, in implement of the back-
 bond, an assignation is made to a third party
 at the truster's desire, but thereafter, upon
 another view and design, that debt and dili-
 gence is taken from this last assigney, and gi-
 ven to another person; to prevent the multi-
 plication of writs, the trustee and last ce-
 dent are desired, upon getting up of his last
 assignation, to sign a new one in favour of
 another person; after the warrandice of the
 second assignation, there must be an excep-
 tion of the first assignation, in this form;
 ' Declaring nevertheless, that the assignation
 ' of the foresaid bond and sums, which was
 ' granted by me to *P.* shall not infer a con-
 ' travention of this warrandice, the same be-
 ' ing now retired by me, and cancelled.'

A getting

A. getting right from his majesty to *B.*'s lands and estate, fallen by forfeiture, and to his escheat, he disposes the lands to sundry persons for the behoof of *B.* who had obtained remission, and assigns the escheat to *B.* himself. In the warrandice of this last assignation it is declared, ' That the disposition
' granted for his behoof, in manner foresaid,
' of the said lands and others (*which likeways*
' *might be comprehended under escheat, as the*
' *mails, tacks, &c.*) and sums particularly and
' generally therein mentioned, shall not be
' interpreted any contravention of this war-
' randice, nor infer double warrandice against
' him.'

When a moveable sum is tailzied, and the assignations, either general or special, are granted with provisions or restrictions, the persons in the tailzie are subjoined, one after another, in that part of the right where the assigney's name is placed, and the provisions are put in the clause of *surrogating*, &c. And in the assigning clause which is before, and in the after part of the right, you say relatively, under the provisions and conditions after or above mentioned, as thus; ' made and consti-
' tuted *A.* and the heirs of his body, which
' failing, *B.* and the heirs of his body, &c.
' and in and to all action, &c. under the pro-
' visions and restrictions after mentioned, *sur-*
' *rogating*, &c. the said *A.* and his forefairs,
' which failing, as said is, in my full right
' and

and place of the premisses, under the provisions and conditions always after specified, *viz.* — with power, &c.' But I have seen the provisions subjoined to the clause of assignation, and before the clause *surrogating*.

When there is reservation made by the cedent in favour of himself, or any other person, the substitution and surrogation, in his full right and place, must bear the assigney only to his right and place of the premisses *pro tanto*.

Of Translations.

A Translation is a continuation of the conveyance of a moveable subject by the assigney to another person; and generally the following conveyances are called Translations, tho' in a fourth or fifth degree of distance from the assigney. Others again call such Dispositions; but there is no settled denomination for such writs, albeit the stile of them be fixed.

What has been said of assignations respects also translations.

In the beginning to the ordinary designation you put an additional one, thus; *Assigney after specified, or, as having right by assignation, (or translation, or disposition) in manner after mentioned.* And after the bond or diligence, or rather, after copying the narrative

of the assignation, you narrate the assignation itself in the ordinary form, and that the same was duly intimated, if it was so, and then you mention the cause of granting, which is the same as in assignations.

Translation of a Bond, and Sums therein contained, whereupon no Diligence hath as yet followed.

BE it known, &c. me A. assigney after specified, *Forasmuch as* (Here narrate the bond, and an assignation thereof in common form) And now seeing that B. in name and behalf of C. hath made payment to me of a certain sum of money for granting the translation under written, wherewith, &c. and discharge the said C. and also the said B. &c. renouncing, &c. therefore wit ye me to have sold, assigned, transferred and disposed, as I, by these presents, sell, &c. to the said B. for the behoof of the said C. the said sum of 20,000 merks, and 2000 lib. of liquidate expences, and the annualrent of the said principal sum resting unpaid since the term of *Whitsunday* 1764 years, and in time coming, during the not-payment thereof: As also the bond above written, with the assignation made to me thereof, *surrogating* the said B. for the behalf foresaid, &c.

with

' *with power* to him, or any other who shall
 ' be intrusted by the said C. to ask, &c. and
 ' to grant discharges, &c. and, if need be,
 ' to cause register the said bond, &c. com-
 ' pone, &c. and generally, &c. *Which trans-*
 ' *lation I oblige me, and my ——— to warrant*
 ' *to the said B. for the behoof above menti-*
 ' *oned, from my own proper fact and deed.*
 ' *Likeas* I have instantly herewith delivered
 ' to the said B. for the behoof above written,
 ' the principal bond and assignation above spe-
 ' cified, both unregistred, to be kept and used
 ' by him, or his forebears, as their own pro-
 ' per evident.' Registration for preservation,
 and execution, if need be.

In translations, and other conveyances of
 assignations, if there be many bonds in the
 narrative, whether granted by the same or
 by distinct persons to the cedent, and if the
 assignations to them are of different dates, and
 granted at several times, they are narrated in
 the same order with the bond. This was
James Hay's practice, even in assignations of
 the same date. The difference of the stile in
 an assignation and translation is this, that the
 stile of the assignation runs thus; *I make B.*
his heirs and donatars, my very lawful cession-
ners and assignies in and to the sum of ———
 &c. The stile of a translation is thus, *I have*
sold, assigned, transferred and disposed; like-
as, &c. to B. his heirs or assignies, the sum of
 ——— &c. The bond and assignation are nar-

rated in the narrative; and, wherever the bond is mentioned, the assignation must be spoken of too. In the clause of translation, as there is a translation of the bond, so must there likewise be of the assignation, which must be delivered up with the bond; so that I remark no material, and even scarce a verbal difference.

In the clause of translation of a bond, and sums contained in a general disposition, and assignation of several other bonds, compts, debts and sums of money, the stile of the translation of the assignation did run thus; ' And in and to the foresaid assignation made to me of the premisses, in so far as the same may be extended to the sums hereby transferred.' In which case also the assignation cannot be delivered up, as is usual, because it is a right to other and greater sums, so there must be an obligation in these or the like words; ' As also I bind and oblige me, and my forefaids, to make the said disposition and assignation forthcoming to the said B. when he shall have necessarily to do there-with.' And this is put before the clause of delivery of the bond.

In assignations or translations made by an heir or executor of goods belonging to his father, or other predecessor, the cedent warrants it, not only from his own fact, but from that of his predecessors, the same must be done, in case the transferrer have right by assignation.

novation from a conjunct person. The reason is, because such assignments being for the most part but gifts, wherein there is no warranty at all, the cedent, in this translation, is, in all equity, obliged to secure his assignee from all hazard.

Of Retrocessions.

*A Retrocession is a writ by the assignee, re-
poning and restoring the cedent in his full
right and place, with the same power he had
before the assignment. It is most commonly u-
sed when an assignee in trust denudes himself in
favour of the trustee; and it is in this form.*

*The narrative being premised, in which com-
monly the assignment or translation is deduced,
or sometimes the backbond is narrated, after
which follows the subsumption, which is vari-
ous, according to the circumstance and bargain
of parties. Thus a tutor to a minor, whose
father had got right to certain sums for securi-
ty of a debt owing to him, and had granted
backbond, being about to retrocess the cedent,
subsumes, ‘ And seeing the said B. did not re-
cover payment of the two debts above men-
tioned, which were due by — as also,
‘ seeing the said C. hath given to the said B.
‘ my pupil, a discharge of the backbond a-
‘ bove specified, wherethrough, in all equity
‘ and reason, he ought to be reponed to his*

own right and place of the two debts above written, due by the said ——— and his cautioner, and by the said ——— *therefore, &c.* Another form of a subsumption is this; And seeing my name was only borrowed to the assignation, translation and disposition above rehearsed by the said C. upon my faithful promise for denuding me thereof in his favour, in manner after expressed; *therefore, &c.*

The peculiar stile of the retrocession is, *Therefore wit ye me* to have reponed, restored and retrocessed, as I, by these presents, &c. the said C. his heirs or assignies, secluding his executors, to his own right and place of the two debts above specified, due by the said ——— and his cautioner, and by the said ——— with the assignation and translation of the first bond, and the assignation of the said second bond, and all that has followed, or may follow thereupon; *surrogating, &c.* with power, &c. (*as in a translation*) and generally all other things, &c. before the granting of this retrocession, which I oblige me to warrant *from fact and deed in common form.* *Likeas* I have delivered back to him the extracts of the two bonds, &c.

Of Vendition of Ships.

SHips, boats, barks, and the like machines: moving on the water, are conveyed by a moveable right, which is of a peculiar stile, and is called a *vendition*, thus :

BE it known, &c. me *A.* master of the good ship, called, &c. which I lately caused build in, &c. and which cost me, by the fitted accompts subscribed by the owners, 1054 *l. sterling* money, for the sum of — money foresaid, as the the just sixteenth part of the said whole sum, contented, paid, and really, and with effect, delivered to me by *B.* whereof I, by these presents, grant the receipt, renouncing all exceptions and objections in the contrary; and, by these presents, exonerating and discharging the said *B.* his heirs, executors, and all others whom it effeirs, of the same for ever, to have *sold and disposed, likeas* I, by these presents, sell and dispone, to and in favour of the said *B.* his heirs and assignies, (secluding executors) *all and whole* the just sixteenth part of the said ship, called — with the sixteenth part of the guns, trows, sails, anchors, masts, raes, oars, float-boats, and all other furniture and pertinents belonging thereto, together with all right, title and interest I have

or

‘or can pretend to the same; and I hereby
 ‘surrogate and substitute the said *B.* and his
 ‘forefaids, in my full right and place of the
 ‘said sixteenth part of the said ship and per-
 ‘tinents. *And farther*, I bind and oblige
 ‘me, my heirs, executors and successors, to
 ‘make just compt and reckoning to the said
 ‘*B.* his heirs and assignies, (secluding exe-
 ‘cutors) of all and sundry the freights of the
 ‘whole voyages the said ship shall happen to
 ‘ply without or within this kingdom, and to
 ‘make payment to him, or his forefaids, of
 ‘the whole profit which the foresaid sixteenth
 ‘part of the said ship shall happen to make,
 ‘and that after each time of her return with-
 ‘in this realm, before any resailing forth
 ‘thereof, or at any port or place abroad, when
 ‘I am required. The which vendition I bind
 ‘and oblige me, and my forefaids, to be good
 ‘and sufficient to the said *B.* and his fore-
 ‘faids, for their right to the said sixteenth
 ‘part, and free in all waters, passages, roads,
 ‘rivers and creeks, within or without this
 ‘kingdom, from all debts and sums of mo-
 ‘ney, arrestments, (*a*) that may in any way
 ‘mar or impede him, or his forefaids, in the
 ‘peaceable possession thereof, by any fact or
 ‘deed of mine done, or to be done, prejudi-
 ‘cial thereto. Registration.

‘ As

(*a*) Sometimes the following words are added —
*Bottomries, former venditions, clags, claims, or other
 inconveniencies whatsoever.*

As trade and navigation seem at present to be more diligently attended to than in former years, and a laudable zeal for promoting and cultivating both daily increaseth, it will not be thought foreign to our author's method to add here some few stiles relative thereto; and these are, *charter-parties, bonds of bottomry, and policies of insurance.*

Charter-party may be defined, *A deed or writing used betwixt merchants and sea-faring men, containing the agreements made between them concerning their merchandize and maritime affairs.* And may be further described, to be a certain agreement between the master or owners of the ship, or both together, on the one part, and the merchant or freighter on the other, whereby the master, &c. agree to sail at such time or times, from one port to another, and deliver the goods where-with the ship is freighted in the manner expressed by the writing, which consists of as many parts as there are parties distinctly interested, and wherein is usually inserted the general exceptions of wind and weather, the interruption by enemies, &c.

The president *Boyer* says the word is thus derived, that *per medium charta incidebatur, & sic fiebat charta partita*; because, in the time when notaries were less frequent, there was only one instrument made for both parties: This they cut in two, and gave each his portion,
and

and joined them together at their return; to know if each had done his part. This he observes to have been practised in his time, agreeable to the method of the *Romans*, who, in their stipulations, used to break a staff, each party retaining a moiety thereof as a mark.

A charter-party differs from a bill of lading, in that the first is for the entire freight or loading, and that both for going and returning; whereas the latter is only for a part of the freight, or, at most, only for the voyage one way.

A Charter-Party.

‘ **A**T ——— the first day of *June* 1764
 ‘ years, it is condescended and agreed
 ‘ upon betwixt *D.* shipmaster in *A.* com-
 ‘ mander of the good ship called the *C.* of
 ‘ *A.* of the one part, and *W.* and company,
 ‘ merchants in *E.* of the other part, in man-
 ‘ ner following; *that is to say*, the said *D.*
 ‘ hath freighted, and, by these presents, for
 ‘ the freight underwritten, freights and lets
 ‘ to the said *W.* and company, the said ship
 ‘ called the *C.* of *A.* for plying the voyage
 ‘ after mentioned, *viz.* from the port of —
 ‘ where she presently lies, to ——— or ———
 ‘ in option of the said freighters, and from
 ‘ thence back to the port of ——— when the
 ‘ voy-

voyage is to terminate: For which purpose
 the said *D.* obliges himself, betwixt and the
 first day of *July* next to come, to have his
 said ship in readines, in good order, and
 sufficiently found with all kind of necessary
 implements requisite for such a voyage, and
 to keep the said ship in sufficient repair du-
 ring the said voyage, and to take on board
 such goods as the said freighters shall desire
 at the port of — and sail with the first fair
 wind and weather from the said port of —
 and carry the same to ——— or ——— as
 said is, and there to liver the same, and, at
 either of the said places of ——— or ———
 to take on board a full loading of ——— or
 other goods, as the said freighters, or their
 correspondent shall desire, and to carry the
 same from thence to the said port of ———
 where the said ship is to remain eight wea-
 ther-work ly-days for livering the said car-
 go; and, in case the said freighters, or their
 correspondent, find it necessary, for stow-
 age of the goods at ——— or ——— to
 make an alteration in the steerage, by tak-
 ing down some beds, they are to have li-
 berty to do the same upon their own charge,
 and being bound, as they hereby oblige them-
 selves upon their own proper expence, to
 put the said ship in her present condition
 again, in case any such alteration is made:
 And the said *D.* obliges himself to grant
 bills of loading for the goods he shall re-
 ceive

' ceive on board, and deliver the same in good
 ' condition, and that none of them shall be
 ' anyways damaged or embezzled by himself
 ' or ship's company, or through default of
 ' the ship, (sea hazard always excepted) And,
 ' on the other part, the said W. and compa-
 ' ny bind and oblige themselves, their heirs,
 ' executors and successors, to make payment
 ' to the said D. or his owners, their heirs,
 ' executors or assignies, of the sum of —
 ' *sterling*, each month. the said ship shall be
 ' employed in her performing the said voyage,
 ' for the tear and wear of the ship and her
 ' furniture, and to pay all other charges
 ' of sailing, and wages, and necessary provisi-
 ' ons to the said master and his mariners du-
 ' ring the said voyage, with all port-charges
 ' and average: And upon advice of the ship's
 ' arrival at ——— or ——— the said freighters be-
 ' come bound to pay the owners of the said
 ' ship at ——— *sterling*, as three months
 ' freight of the said ship, and the remainder
 ' of the freight within forty eight hours af-
 ' ter unloading at the port of — and, in case
 ' the ship is in readiness sooner than the said
 ' first of *July* next, and her outward cargo
 ' on board, she is to sail the first fair wind
 ' and weather, after her outward cargo is on
 ' board, if the freighters desire it, the first of
 ' *July* next being declared always to be the day
 ' she enters into pay; and if the said ship shall
 ' happen to sail sooner than the said first of
 ' *July*

July, she is to enter into pay the day she sails from — and, if any misfortune befall the said ship, (as GOD forbid) so as the voyage cannot be performed, the said freighters oblige themselves to pay the said freight until the time the said misfortune happens; as also the said freighters oblige themselves to pay — *Sterling* of demurrage, each day the said ship shall be detained at the said port of — in livering her cargo, after the ly-days above mentioned, through default of the freighters; and the parties oblige themselves to perform the premisses to each other, under the penalty of — *Sterling*, to be paid by the party breaker to the party performer, or willing to perform the premisses, over and above performance.' *Registration.*

Form of an English Charter-Party of Affreightment.

THIS charter-party, indented (a) and made the — between A. &c. mariner,

(a) Indenture is a word more used in the *English* law than with us; for they distinguish their writings into *deeds indented* and *deeds plain*, which names principally arise from the form of them, the one being cut in and out at the top *dentways*, and the other *plain*. A deed indented is defined to be a deed consisting of

‘ finer, master and owner of the good ship or
 ‘ vessel, called — now riding at anchor at
 ‘ — of the burden of two hundred tons,
 ‘ or thereabouts, of the one part, and *B, C,*
 ‘ *D*, merchants in — of the other part,
 ‘ witnesseth, that the said *A.* for the confide-
 ‘ rations herein after mentioned, hath grant-
 ‘ ed, and to freight letten, and, by these pre-
 ‘ sents, doth grant, and to freight let, unto
 ‘ the said *B, C,* and *D*, their executors, admi-
 ‘ nistrators and assigns, the whole tonnage of
 ‘ the hold, stern-sheets, and half-deck of the
 ‘ said ship or vessel, called — from the
 ‘ port of *London* to — in a voyage to be
 ‘ made by the said *A.* with the said ship, in
 ‘ manner hereafter mentioned, (that is to say)
 ‘ to sail with the first fair wind and weather
 ‘ that shall happen after — next, from the
 ‘ said port of *London*, with the goods and
 ‘ merchandize of the said *B, C,* and *D*, their
 ‘ factors

two parts, or more; for there are deeds tripartite,
 quadripartite, sextipartite, &c. in which it is expres-
 sed, ‘ That the parties have to every part thereof in-
 ‘ terchangeably set their several seals; and, for that it
 ‘ contains more parts than one, each part is indented,
 ‘ or cut, one of them into the other, that thereby it
 ‘ may appear they belong to one business or contract.
 ‘ *Wesl's symb. sect. 47.* And this cutting is so mate-
 rial by the *English* law, that, if a deed or writing be-
 gins this indenture, &c. and is not so cut or indented,
 it is no indenture, but may work as a *deed poll*; but
 if the deed is actually indented, and there are no
 words importing an indenture, it is nevertheless an in-
 denture in law. *Wood's instit. 223.*

' their factors or assigns, on board, to — a
 ' foresaid, (the dangers of the sea excepted)
 ' and there unlade and make discharge of the
 ' said goods and merchandize; and also shall
 ' there take into, and aboard the said ship a-
 ' gain, the goods and merchandizes of the said
 ' B, C and D. their factors and assigns, and
 ' shall then return to the port of *London* with
 ' the said goods, in the space of ——— limi-
 ' ted for the end of the said voyage: In con-
 ' sideration whereof, the said B, C and D. for
 ' themselves, their executors and administra-
 ' tors, do covenant, promise and grant to,
 ' and with the said A. his executors, admi-
 ' nistrators and assigns, by these presents,
 ' that the said B, C and D. their executors,
 ' administrators, factors or assigns, shall and
 ' will, well and truly, pay, or cause to be
 ' paid, unto the said A. his executors, ad-
 ' ministrators or assigns, for the freight of
 ' the said ship and goods, the sum of ———
 ' (or so much *per ton*) within twenty one
 ' days after the said ship's arrival, and goods
 ' returned and discharged at the port of *Lon-*
 ' *don* aforesaid, for the end of the said voy-
 ' age; and also shall and will pay for ———
 ' demurrage, (if any shall be, by the default
 ' of them, the said B, C and D. their factors
 ' or assigns) the sum of ——— *per day*, dai-
 ' ly, and every day, as the same shall grow
 ' due; and the said A. for himself, his exe-
 ' cutors and administrators, doth covenant,
 ' D d 2 ' promise,

promise and grant to and with the said *B*,
C and *D*. their executors, administrators
 and assigns, by these presents, that the said
 ship or vessel shall be ready at the port of
London to take in goods, by the said *B*, *C*
 and *D*. on or before ——— next coming; and
 the said *B*, *C* and *D*. for themselves, their,
&c. do covenant and promise, within ten
 days after the said ship or vessel shall be
 thus ready to have their goods put on board
 the said ship, to proceed on in the said voy-
 age; and also, on the arrival of the said
 ship at ——— within ——— days, to have
 their goods ready to put on board the said
 ship to return on the said voyage: And the
 said *A*. for himself, his executors and admi-
 nistrators, do farther covenant and grant, to
 and with the said *B*, *C* and *D*. their executors,
 administrators and assigns, that the said ship
 or vessel now is, and, at all times during the
 said voyage, shall be, to the best endeavours
 of him the said *A*. his executors and admi-
 nistrators, and at his and their own proper
 costs and charges, in all things, made and
 kept stiff, staunch, strong, well-apparelled,
 furnished and provided, as well with men
 and mariners, sufficient and able to guide and
 govern the said ship, as with all manner of
 rigging, boats, tackle, apparel, furniture,
 provision, and appurtenances fitting and
 necessary for the said men and mariners, and
 for the said ship, during the voyage afore-
 said,

‘ said. In witness whereof, the parties above
 ‘ named have put their hands and seals the
 ‘ day and year above written.’

The above examples are sufficient to give the reader a general idea of these writs, but this contract may be diversified into as many various forms as the nature of the voyage requires, so that it is impossible to give an example that will answer all or many cases; as, for instance,

When a ship is to apply to several ports to discharge her cargo and relade, after the clause where the cargo is to be unlade, you add,
 ‘ And there also to receive, relade and take in,
 ‘ unto and aboard her, all such other goods
 ‘ and merchandizes, (as she may conveniently
 ‘ stow and carry, over and above her victuals,
 ‘ tackle and apparel) and as the said *B, C* and
 ‘ *D.* their factors or assigns, shall appoint
 ‘ and think fit to lade unto her, and then the
 ‘ said ship, with the first good wind and wea-
 ‘ ther that God shall send (the dangers and
 ‘ hazards of the sea excepted) shall directly
 ‘ sail and apply to —, and there shall un-
 ‘ lade and make a discharge of the said goods,
 ‘ and relade again according to the direction
 ‘ and appointment of the said *B, C* and *D.*
 ‘ their factors or assigns, and with such
 ‘ goods, wares, and merchandizes, as the said
 ‘ *B, C* and *D.* their factors, or assigns, shall
 ‘ think fit to lade unto her, not exceeding the
 ‘ proportion that the said ship can safely stow

and carry, as aforesaid; and then the said ship, with the first good wind, &c. And so insert as many places as the ship is to touch at.

When the ship, upon her return, is to touch at a port lying at a distance from the merchants place of residence, the master is generally obliged, by the charter-party, to send an express to the owners, which may be thus expressed: ' And the said ship being arrived at —, he the said A. or such person as shall be master of the said ship for the time being, shall from thence send express notice in writing, to be given or left to, or for the said —, his executors, factors or assigns, at or in the now dwelling-house of the said —, situated in —. That the said ship and goods are safely arrived at the said last mentioned place; and at such place of arrival the said ship shall stay and abide the space of ten days, for answer and direction to be returned and given by him the said —, his executors, factors, or assigns, for the sailing and applying of the said ship to — or —; the charge of sending a messenger to give such intelligence, as aforesaid, to be satisfied and paid by the said —, his executors or assigns; and, according to such answer and appointment, shall, with the first good wind, &c. directly sail and apply to — or —, which of the said places the said ship shall be

* be so ordered or appointed to sail and apply
 * into; and, within ten days after the arrival
 * of the said ship at the said place, so to be
 * appointed, the said ship shall make her right
 * discharge of the said merchant goods and
 * merchandizes, and there to end and finish
 * her said intended voyage.'

When the ship is to touch at several ports,
 the days she is to remain are always expressed
 thus; ' And it is farther agreed betwixt the
 * said parties, by these presents, that the said
 * ship shall tarry and abide at ——— and
 * ——— before mentioned, for her several dis-
 * charges and reladings, at the said several
 * places, as aforesaid, the space of — days in
 * the whole; that is to say, at — 20 days,
 * at — 20 days, and at — 25 days,
 * within which several times, before limited
 * and expressed, the said ———, for himself
 * and his executors, by these presents, en-
 * gages to discharge and relade the said ship in
 * manner and form, at the several places and
 * ports of ——— before mentioned.'

When a ship is to trade at several ports,
 and to be hired by the ton, the several pro-
 portions, that are reputed a ton at the dif-
 ferent places, ought to be expressly mention-
 ed; and then there is a clause thus; ' And for
 * other goods and merchandizes, according to
 * the usual custom.'

If the port-charges are to be paid partly by
 the merchant, and partly by the ship-master, it
 ought

ought to be expressed thus; ‘ And it is agreed
 ‘ betwixt the said parties, by these presents,
 ‘ that all port-charges that shall arise and
 ‘ grow due, to be paid for and in respect of
 ‘ the said ship, in the said intended voyage,
 ‘ shall be satisfied and paid in manner and
 ‘ form following, *viz.* Two parts thereof
 ‘ by the said —, his factors or assigns, and
 ‘ one third part by the said —, his
 ‘ executors or assigns.’ In case the mer-
 chant shall be obliged to keep the ship, at
 any of the ports, longer than the days agreed
 upon, there is generally a clause for that
 purpose thus; ‘ And it is agreed betwixt the
 ‘ said parties, by these presents,) notwithstand-
 ‘ ing any manner of thing herein before
 ‘ mentioned) that, in case necessity shall re-
 ‘ quire, it shall be lawful to and for the said
 ‘ —, his factors or assigns, or any of
 ‘ them, to keep the said ship at demur-
 ‘ rage, at the several places and ports afore-
 ‘ said of — and —, the space and time
 ‘ of — days, and no more, after the end
 ‘ and expiration of the said — days before
 ‘ limited, for the said ship to stay at the said
 ‘ places and ports; that is to say, — days
 ‘ at — and — above mentioned; for every
 ‘ day of which demurrage, over and above
 ‘ the said — days, the said — his fac-
 ‘ tors and assigns, shall well and truly pay, or
 ‘ cause to be paid, unto the said —, his
 ‘ executors and assigns, the sum of —
 ‘ sterling,

‘ Sterling, daily and each day, as the same shall
 ‘ fall due, and the said money that shall arise
 ‘ and grow due for demurrage shall be paid.’
 (*Here set down the day when it is to be paid.*)

In case the master of the ship should have
 occasion to take up any of the freight at
 any of the ports he is to touch at, there is
 generally a clause inserted for that purpose,
 thus; ‘ And also, it is agreed betwixt the
 ‘ said parties, by these presents, that the
 ‘ said —, his factors or assigns, shall pay,
 ‘ or cause to be paid, to the said —, his
 ‘ executors or assigns, or such as shall be ma-
 ‘ ster of the said ship for the time being,
 ‘ such sum or sums of money as he or they
 ‘ shall have occasion for, at — and at —
 ‘ afore said, so that all the said sum and sums
 ‘ of money, so to be paid, are to be deducted
 ‘ upon the payment made for the freight of the
 ‘ said ship, in manner and form afore said.’

It is sometimes specified, that the master
 shall not take aboard the said ship, goods be-
 longing to any other person, nor exceed a
 certain quantity for himself, thus; ‘ And it
 ‘ is agreed betwixt the said parties, that
 ‘ the said master, his factors or assigns, shall
 ‘ not lade, or cause to be laden, any goods or
 ‘ merchandize aboard the said ship, for any
 ‘ other merchant or persons whatsoever, ex-
 ‘ cept the said —, save only the quanti-
 ‘ ty or proportion of — tons, which the
 ‘ said master, or his company, may lade for
 ‘ their

* their own use, at the time of lading the said
 * ship at the several ports aforesaid, without
 * allowance for the same, if occasion shall re-
 * quire.'

Sometimes there is a clause for carrying
 the merchant and his goods, &c. to and from
 the land (after the obligation upon the ma-
 ster to furnish tackle, mariners, &c.) thus:
 * Which men, or so many of them as shall
 * be requisite shall be ready at all time and
 * times, with the boat of the said ship, to serve
 * and carry the said merchant, his factors and
 * assigns, and goods and merchandizes, accor-
 * ding to the custom, to and from the land,
 * during the said voyage.'

And thus the clauses may be varied, or other
 ones added, according to the design and inten-
 tion of parties.

These charter-parties regulate the freight,
 which is the *Hire payable by the merchants for
 the voyage*. A ship is either freighted for
 the voyage outward, or out and in, or for a
 trading voyage; and, in all these cases, the
 freight is, regularly, not due till the whole
 voyage is performed: If, during the voyage,
 the ship becomes unable to complete the
 same, without the master's fault, he may ei-
 ther mend his ship, and put her in conditi-
 on to perfect the voyage, or freight ano-
 ther upon his own risk, and, if the mer-
 chants do not agree to it, the freight is due
 for so much as the ship hath earned. If the

ship

Ship is freighted by the ton, and said, in the charter-party, to consist of so many tons, and is found to be less, freight is only due according to the true burden: If the ship is freighted by the month, and is cast away before arrival, but all the lading preserved, freight is due according to the time of service. *Molloy de jure marit. lib. II. cap. 6.*

When the cargo is lost, tho' by sea-hazards, and without the fault of the master or mariners, yet the freight is not due, for it only becomes a debt by the ship's safe arrival, and preservation of the loading thereof: In case of the ship's perishing with the cargo, the merchants lose their goods, and the owners of the ship have no claim to the freight, not having performed their part of the contract: If part of the goods is saved, the freight is due proportionably.

If the master is hindered to perfect the voyage, through the fault of the merchants, the whole freight is due: If a time is limited in the charter-party for loading the ship, and one of the parties is not ready, the other is at liberty, and hath an action of damages to recompense his loss. The master and owners have an hypothec, or tacit obligation, for the freight upon the cargo, which they may detain until it is paid. *Molloy, ut supra.*

Not only the contracts of the master are binding upon the owners, but likewise his de-

delinquencies in office, by spoiling the things committed to his charge, or otherways doing damage to third parties, by himself or the crew that serve in the ship, or even where the damage is done by passengers; and, by the civil law, the owners were all liable *in solidum*; and formerly there was no distinction in our law, in the obligation of the owners, between damages occasioned by the faults of the master, and his contracts; and, by the present custom, they are free, upon giving up the ship, or their interest therein, to the person damaged, which doth not seem to have been formerly received by us, See *Décis. December 11. 1672, Carnegy contra Napier*, observed by *Stair*; and *June 14. 1672. Grott contra Sutherland*, observed by *Dirletoun*. But now the matter is thus regulated by a *British act, 7 Geo. II. cap. 15.* ‘That the owners of ships shall only be answerable for the acts or embezzlements of the master or mariners, without their knowledge, to the extent of the ship, with its appurtenances and freight; and, if several persons suffer damage, and the value of the premisses will not satisfy them all, they shall receive satisfaction upon an average, in proportion to their respective losses.’ This act doth not subject the owners on account of facts of passengers.

There

There needs no commission in writing to constitute one master of a ship, in order to create these obligations against the owners, it is sufficient that he is acting in the office, whence it appears, that he is intrusted with the ship, and all the powers and authorities necessary for discharging that trust, are implied by the intendment of the law. Wherefore, as officers are created by mandates, so here one's officiating presumes a mandate so strongly, that it cannot be redargued by contrary proof that he had none, in as far as concerns the interest of third parties that contracted with him in the mean time.

Of Bonds of Bottomry.

Bottomry is a custom of lending of money to mariners on the adventure of the voyage, whereby, if the ship returns safe, the borrower is to pay the lender a premium over and above the money lent, which is not ruled by lawful interest, but by the agreement of the parties, because the adventure interfering, and the lender being liable to lose all his money in case the ship should not return safe, the taking above common interest is not reckoned usury. The value of premiums, in these cases, is impossible to be ascertained, it depending on a variety of contingencies, but is generally between 30 and

50 *per cent.* But the difference of voyages, the goodness of the ship, and whether it be peace or war, all contribute to render the value of the premium uncertain, and the greater the danger is, the greater may be the profit reasonably required for the money advanced. Money lent on bottomry is either upon the bare ship, (the usual way) or upon the person of the borrower, and sometimes upon both; the first is, where a man takes up money, and obliges himself, that, if such a ship shall arrive at such a port, then to repay, perhaps, in long voyages, near double the sum lent; but, if the ship happens to miscarry, then nothing. But when money is lent at interest, it is delivered at the peril of the borrower, and the profit of this is merely the price of the loan; whereas the profit of the other is a reward for the danger and adventure of the sea, which the lender takes upon himself, and makes the interest lawful. In a competition of bonds of bottomry, the last will be preferable to preceeding ones, because by it the ship was enabled to proceed in the voyage; but if the owner of the ship borrows money for his own use, and binds the ship to the creditors for their security, his bonds to them are preferable according to their dates. The creditor, by the civil law, behoved to prove that the ship wanted the reparations for which the money was lent, but needed not prove the actual application

cation of the money ; but, by the present law and custom, he needs not prove that the ship wanted the reparations, but only that he fairly lent the money to the master, acting as such, for the use of the ship and voyage.

Bond of Bottomry.

‘ **T**O all people whom these presents shall
 ‘ come, I *A.* of ———, owner and
 ‘ master of the good ship called ———, of the
 ‘ burden of two hundred tons, or therea-
 ‘ bouts, now riding at anchor in the har-
 ‘ bour of ———, and bound for ——— in the
 ‘ *West-Indies*, send greeting: Whereas I the
 ‘ said *A.* am at this time necessitated to take
 ‘ up, upon the adventure of the said ship,
 ‘ the sum of 100 *l. Sterling*, for setting forth
 ‘ the said ship to sea, and furnishing her with
 ‘ provisions and necessaries for the said voy-
 ‘ age, which sum of 100 *l.* money foresaid,
 ‘ *C.* of ——— merchant, hath, at my re-
 ‘ quest, lent unto me, and supplied me with,
 ‘ at the rate of 20 *l.* money foresaid, for the
 ‘ said 100 *l.* during the said voyage: Now,
 ‘ know ye, that I the said *A.* do, by these pre-
 ‘ sents, for me, my executors and administra-
 ‘ tors, covenant and grant to and with the
 ‘ said *C.* that the said ship shall, with the
 ‘ first fair wind, after the ——— day of ———
 ‘ depart from ———, and shall, as wind and
 E e 2 ‘ weather

' weather serve, proceed in her voyage to
 ' ----- in the *West-Indies* ; and, having there
 ' tarried until ----- and the opportunity of
 ' a convoy, or being sooner dispatched, (which
 ' shall first happen) shall return from thence,
 ' and shall, as wind and weather serve, di-
 ' rectly sail back to ----- to finish her said
 ' voyage ; and I the said *A.* in consideration
 ' of the said sum of 100 *l.* *Sterling* lent to
 ' me by the said *C.* as said is, do hereby bind
 ' myself, my heirs, executors and admini-
 ' strators, my goods and chattels, and parti-
 ' cularly the said ship, with the freight, tac-
 ' kle and apparel of the same, to pay unto
 ' the said *C.* his executors, administrators or
 ' assigns, the sum of 120 *l.* of lawful *Bri-*
 ' *tish* money, within one and twenty days
 ' next after the return and safe arrival of the
 ' said ship in the said ----- from the said in-
 ' tended voyage ; and I the said *A.* do for me,
 ' my executors and administrators, covenant
 ' and grant to and with the said *C.* his execu-
 ' tors and administrators, by these presents,
 ' that I the said *A.* at the time of executing
 ' and delivery of these presents, am true and
 ' lawful owner and master of the said ship,
 ' and have power and authority to charge and
 ' engage the said ship as aforesaid, and that
 ' the said ship shall, at all times after the said
 ' voyage, be liable and chargeable for the pay-
 ' ment of the said 120 *l.* according to the
 ' true intent and meaning of these presents,
 ' and

' and that the said ship is free and clear from
 ' all former bargains and sales, titles, char-
 ' ges, and incumbrances whatsoever. And,
 ' *lastly*, it is hereby declared and agreed, by
 ' and between the said parties to these pre-
 ' sents, that, in case the said ship shall be lost,
 ' miscarry, or be cast away (which GOD for-
 ' bid) before her next arrival in the said——
 ' from the said intended voyage, that then
 ' the said payment of the said 120 l. shall not
 ' be demanded, or be recoverable by the said
 ' C. his executors, administrators or assigns,
 ' but shall cease and determine, and the loss
 ' thereby be wholly born and sustained by the
 ' said C. his executors and administrators,
 ' and that then, and from thenceforth, every
 ' act, matter and thing herein contained, on
 ' the part and behalf of the said A. shall be void,
 ' any thing herein contained to the contrary
 ' notwithstanding. In witness, &c.' Some-
 times there is adjected to these bonds a dis-
 position to the ship, thus; ' And, for the bet-
 ' ter performance of the premises, I the said
 ' A. have bargained and sold, *likeas*, &c. to
 ' and in favour of the said C. his heirs and ex-
 ' ecutors, all the said ship and the tackle, &c.'
 And then there follows this clause, ' Provid-
 ' ing, nevertheless, that if the said A. his heirs
 ' or executors, shall really, and with effect,
 ' pay, or cause to be paid to the said C. his
 ' heirs, or executors, or assigns, the said
 ' 120 l. money foresaid, and likewise per-
 E e 3 ' forma

‘ form the agreements, herein contained to be
 ‘ done on his part, that then, and in that
 ‘ case, this present bargain and sale of the said
 ‘ ship and premisses, and every thing there-
 ‘ in contained, shall cease and be void, null,
 ‘ and of no force nor effect, any thing here-
 ‘ in contained to the contrary notwithstanding.’

Policy of Insurance.

INsurance, or policy of assurance of ships, may be described to be a contract, whereby the insurer obliges himself to make good the losses and damages that may befall the vessel, its equipage, tackle, victualling, loading, &c. either from tempests, shipwrecks, pirates, fire, war, reprisals, &c. in part or in whole, as specified in the contract, ‘ In consideration of a certain sum, more or less, according to the risk; which sum is paid down to the assurer by the assuree, upon his signing the policy.’

The origin of these assurances is ascribed to the *Jews*, at the time they were expelled *France* in the 1182, who are said to have used this as a means to facilitate the transporting of their effects. Others give the merchants of *Marseilles* the honour of the first invention of this kind of commerce. The term *policy* is *Spanish*, and comes from *polica* a schedule;

dule; but the practice comes from the *Italians* and the *Lombards*, who again derive it originally from the *Latin*, *pollicitatio*, promise.

This branch of business hath for some time been practised by several of our merchants, but the grand mart for it is the city of *Amsterdam*. It is there not only the *Dutch* traders insure their vessels, but, what is infinitely more considerable, such are the riches and reputation of the inhabitants, as to engage the generality of merchants of other countries to prefer them to their own countrymen, when it would be much easier for them to find assurers at home, or in the ports where the vessels are laden. And, although the number of insurers in that city is not reckoned above fifty or sixty persons, yet their wealth and character is such, that a man never fails of an assurer, be the countries or ports what they will, the cargo ever so rich, or the dangers ever so imminent.

Insurances are either publick or private. The publick are transacted by established offices, under some charter or patent, and having a common bank; the private by merchants, or other persons of reputation, who chuse to deal that way.

By an act, 6. *Geo. I. cap. 17.* two companies were erected in *London*, by charters from the crown, for assurance of ships and cargoes, and for lending money on bottomry; and all other societies are restrained from doing

ing it, and, if they presume in the contrary, the policies of assurance are void, and the sums therein forfeited, the one half to the king, and the other to the informer; and the bonds for money lent by way of bottomry are declared void, as usurious, and the offenders to suffer as in cases of usury. But private or particular persons may still assure ships and merchandize, or lend money on bottomry, if the same is not on account or risk of persons acting in a society.

Policies of assurance are for the most part printed upon stamped paper, blanks being left for filling up the essential clauses, and must be made out within three days at farthest after the assurance of any ships, goods, or merchandize, or otherways the insurer forfeits 100 *l.* and the obligations or notes for insurance of them are declared void, and nothing to be recovered thereon by the insurer, (*See 11 Geo. I. cap. 29.*) so that the liberty allowed in other cases, of supplying the nullity, by procuring the deeds, on payment of 5 *l. Sterling*, to be stamped, doth not here take place.

The proper subject of this contract is future damage, but parties may agree concerning past damage likewise; in which case, if the assured knew of the loss, or the assurer of the ship's safe arrival, the contract is void, as fraudulent, and knowledge is presumed, if, computing three miles to the hour, advice could

could have been had of the circumstances of the ship.

By an act of the 4 *Geo. I. cap. 10.* the punishment of death is inflicted upon any owner, master, or mariners belonging to any ship insured, that wilfully cast away, burn, or destroy the ship, or procure the same to be done, to the prejudice of the assurer. If one assures the same subject, with different persons, by divers policies, designedly, the contracts are void as to all; but, if it happened without fraud, the first policy alone subsists by the law of other countries: But this matter is also now regulated by an act, 19 *Geo. II. cap. 37. viz.* ‘ That it shall not be lawful to make re-assurance, unless the assurer shall be insolvent, become a bankrupt, or die;’ in either which cases the party may make re-assurance to the amount of the sum by him before assured, provided it shall be expressed in the policy to be a re-assurance.

Policy of Insurance upon Goods.

‘ **I**N the name of GOD, *Amen.* Know all men, by these presents, that we subscribers, merchants in *Glasgow*, have assured, *likeas* we, each of us for ourselves, do, by thir presents, assure, to and in favour of *A.* the several sums of money annexed
‘ to

• to our respective names underwritten, upon
 • all and whatsoever lawful kinds of goods
 • and merchandize, laden, or to be laden on
 • his account, on board the —, burden —
 • tons, or thereabouts, whereof *E.* is master
 • for this present voyage or whosoever else
 • shall go master in the said ship, or by what-
 • ever other name the said ship or master is
 • or shall be called, beginning the adventure
 • upon the said goods and merchandize, from
 • the loading of the same on board the said
 • ship in —, and to continue and endure
 • until the said ship —, with her goods and
 • merchandize, shall arrive at —, and until
 • the goods be safely unloaded. The said
 • goods and merchandize are, and shall be va-
 • lued at — *Sterling*, without any farther ac-
 • compt to be given by the assured to the assu-
 • rers, or any of them, for the same; accor-
 • ding to which particular sum, all losses that
 • may happen upon the said goods and mer-
 • chandize, are to be repaired by us proportio-
 • nably to the several sums annexed to our sub-
 • scriptions, in manner underwritten, touch-
 • ing the adventures and perils, which we the
 • said assurers are contented to bear, and do
 • take upon us in this voyage; they are, of
 • the sea, men of war, enemies, pirates,
 • rovers, thieves, jettezons (*a*), letters of

• mart

(*a*) This word *Jetteson*, *Jetsen*, *Jetson*, or *Jetsam*,
 not being a word in our practice, I have thought pro-
 per

mart or counter mart, surprisals, takings
 at sea, arrests, restraints and detainments
 of all Kings, Princes, or people, of what
 nation, condition, or quality soever, bar-
 ratry of the master or mariners, and all o-
 ther perils, losses or misfortunes, that have
 or shall come, to the hurt, detriment or da-
 mage of the said goods and merchandize,
 or any part thereof, during this adventure :
 And, in case of any misfortune or loss, it
 shall be lawful for the assured, their factors,
 servants and assigns, to sue, labour, and
 travel for, and in and about the defence,
 safeguard and recovery of the said goods
 and merchandize, or any part thereof, with-
 out prejudice to this assurance, to the char-
 ges whereof, we the assurers will contribute,
 each of us for ourselves, according to the
 respective sums assured by us, in manner
 underwritten. And it is agreed by us the
 assurers, that this writing and assurance shall
 be of as much force and effect, as the surest
 policy or writing of assurance made at *Lon-
 don*. And so we the assurers do hereby
 bind and oblige us, each of us for ourselves,
 conform to the sums of money annexed to
 our respective subscriptions underwritten,
 ‘ our

per to give the explication of it. It hath its derivati-
 on from the *French* verb *jetter*, which signifies, *to throw*
out, and is any thing cast out of a ship being in danger
 of a wreck, and driven to the shore by the waves, or
 cast on shore by the seamen.

our heirs and successors, to the said *A.* his
 heirs, executors and assigns, for the true
 performance of the premises, and to repair
 any loss they shall sustain upon the said
 goods and merchandize, or any part thereof,
 to the extent of the sums at which the same
 are particularly valued, in manner above
 written, during the continuance of this
 adventure, confessing ourselves paid of the
 consideration due to us for this assurance,
 by the said assured, after the rate of —
per hundred pounds *Sterling*. And it is here-
 by agreed, that, in case of any loss upon the
 said goods and merchandize, there shall be
 an abatement of two pounds *per* hun-
 dred at payment thereof. *And it is farther*
agreed, that, in case of average, loss not
 exceeding five pounds *per* hundred, upon
 the whole ship, tackle, apparel, boat and
 other furniture, and upon the whole goods
 and merchandizes, laden, or to be laden
 aboard the said ship, we are not to pay or
 allow any thing toward repairing such loss.
It is likewise declared, That the part lost or
 damaged shall be valued exactly in propor-
 tion to the value of the whole subject there-
 by insured. *And it is farther agreed*, that,
 in case any dispute or difference shall arise re-
 lating to a loss on this policy, it shall be re-
 ferred to two different persons, one to be
 chosen by the said assured, and the other
 by us, who shall have full power to adjust
 the

the same; and, in case they cannot agree, then such two persons shall chuse a third person to be overman and umpire betwixt them, and, any two of them agreeing, their sentence and award shall be obligatory to both parties; with and under the burden of which three last named provisions, thir presents are granted, and no otherways. In witness whereof we have subscribed thir presents, printed on stamped paper, conform to act of parliament, at ——— the ——— day of ——— 1764.' The blanks, witnesses names and designations, are filled up by S.

*English Policy of Insurance upon Ship
and Cargo.*

Now all men, by these presents, that
A. as well in his own name, as for
and in the name and names of all and every
other person and persons to whom the same
doth, may, or shall appertain, in part or in
all, doth make assurance, and hereby cau-
seth himself, and them, and every of them,
to be insured, lost or not lost, at and from
the port of ——— to ——— in the king-
dom of ——— and at and from thence, back
to ——— upon all kind of goods and mer-
chandize, and also upon the body, tackle,
apparel, ordnance, munition, artillery, and
F f other

‘ other furniture of and in the good ship
 ‘ ——— burden ——— or thereabouts, where-
 ‘ of *B.* is master, under GOD, in this pre-
 ‘ sent voyage, or whosoever else shall go for
 ‘ master in the said ship, or by whatsoever
 ‘ name or names the said ship, or the master
 ‘ thereof is or shall be named or called, be-
 ‘ ginning the adventure upon the said ship
 ‘ and goods, from and immediately follow-
 ‘ ing the day of the date hereof, and so to
 ‘ continue and endure until the said ship,
 ‘ with her said tackle, apparel, &c. shall be
 ‘ arrived (*a*) back at ——— and hath there
 ‘ moored at anchor twenty four hours in
 ‘ good safety; and upon the said goods and
 ‘ merchandizes, until the same be there dis-
 ‘ charged, and safely landed; and it shall be
 ‘ lawful for the said ship, in this voyage, to
 ‘ proceed and sail to, and touch and stay at
 ‘ any ports or places whatsoever, especially at
 ‘ ——— without prejudice to this insurance.
 ‘ The

(*a*) If the ship is to touch at many ports, you may
 add here, ‘ At all, or any ports and places in ———
 ‘ and ——— or elsewhere beyond ——— and the
 ‘ goods and merchandizes there safely landed, and the
 ‘ adventure to begin on other goods and merchandizes
 ‘ from the loading thereof aboard the said ship, at any
 ‘ ports or places in ——— and ——— or elsewhere
 ‘ beyond ——— and upon the said ship, &c. at her ar-
 ‘ rival at any ports or places in ——— and ——— or
 ‘ elsewhere beyond ——— and so shall continue and
 ‘ endure during her abode there, and farther, until
 ‘ the said ship, &c. goods, &c. whatsoever, shall ar-
 ‘ rive, &c. as above.’

' The said ship, &c. goods and merchandises, &c. for so much as concerns the assured, by agreement made between the assured and assurers in this policy, are and shall be rated and valued at ——— *Sterling*, without farther account to be given by the assured for the same, and touching the adventures and perils which we the assurers are content to bear, and do take upon us in this voyage, they are of the sea, men of war, fire, enemies, pirates, rovers, thieves, jetsons, letters of mart and counter mart, surprisals and takings at sea, arrests, restraints and detainments of all kings, princes and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses and misfortunes that shall come to the hurt, detriment or damage of the said goods, and merchandizes, and ship, &c. or any part thereof; and, in case of any misfortunes, it shall be lawful to the said assured, their factors, servants and assigns, to sue, labour and travel for, in and about the defence, safeguard and recovery of the said goods, and merchandizes, and ship, &c. or any part thereof, without prejudice to this insurance; to the charges whereof we the assurers will contribute, each one according to the rate and quantity of his sum herein assured: And it is agreed by us the insurers, that this writing, or policy of insurance,

‘ rance, shall be of as much force and effect,
 ‘ as the surest writing or policy of assurance
 ‘ heretofore made in *Lombard-street*, or else-
 ‘ where in *London*; and so we the assurers
 ‘ are contented, and do hereby promise and
 ‘ bind ourselves, each for his own part, our
 ‘ heirs, executors, goods and chattels, to the
 ‘ assured, their executors, administrators and
 ‘ assigns, for the true performance of the pre-
 ‘ mises, confessing ourselves paid the consi-
 ‘ deration due unto us for this assurance by
 ‘ *A.* at and after the rate of ——— *per cent.*
 ‘ and, in case of loss, to abate 10 *per cent.*
 ‘ and to pay, without any farther proof of a-
 ‘ ny interest more than this present policy;
 ‘ any use or custom to the contrary notwith-
 ‘ standing. In witness whereof we the assu-
 ‘ rers have subscribed our names and sums
 ‘ assured, in *London*, the ——— &c.’

Of Testaments.

Moveables are conveyed by a *Latter-will*
 and testament, *which is a writ ex-*
pressing the pleasure of the proprietor, in the
disposal and conveyance of his moveable estate,
and the guardianship of his children under age
after his decease; and it contains the the nomi-
 nation of an executor or administrator of these
 goods, which is an essential part of the te-
 stament.

stament. But this nomination alone will not give a right to the goods, save to a third part, which the law allows to the executor in recompence of his trouble; therefore, if the testator design to give the executor any share of his moveable estate, it must be done by way of legacy, and then the executor is made either universal legatar, or gets a determined portion of the moveables; for legacies are only given in a latter-will; under which I comprehend both testaments and codicils, which differ from a testament in this, *that* a codicil has no nomination of an executor, *that* it presupposes an executor to be named, either before or after, nevertheless they are valid tho' no testament be made; for codicils contain only legacies, which are to be paid either by the executor nominated; or by the defunct's nearest in kin.

The stile of a latter-will is very arbitrary, for the only rule, both in the form and legal effect of it, is the will and pleasure of the testator, which, if intelligible and practicable, is to be faithfully and literally obeyed. The following forms are those now in use.

‘ I *A.* being for the present, by the blessing
 of GOD, in health of body and mind;
 ‘ yet, considering the frailty of man’s life,
 ‘ and the uncertainty of the time of my
 F f 3 death,

death, am therefore resolved so to order
 my affairs, in my own time, that all differences, which may fall out thereanent after my death, may be obviated and prevented, therefore I make my latter-will and testament as follows. First, I recommend my soul to God Almighty my Creator, hoping to be saved by the merits of Jesus Christ, my only Lord and Redeemer: And I desire my friends, when it pleases God to call me, to cause decently inter my body in the ordinary burial-place of my family. *And, as to my worldly estate,* I nominate *B.* my eldest son now on life, and the heirs of his body, which failing, *C.* my second son, and the heirs of his body, to be my only executor, and universal legatar and intromitter with my whole goods, gear, debts, sums of money and moveables, of whatsoever nature, pertaining, or that shall happen to pertain and be resting to me the time of my decease, and falling under testament, to whom I leave and bequeath the same, with the burden always of the payment of my just and lawful debts, and the provision of my other children; and of what part of the moveables is or shall be provided by me to *D.* my dear and well beloved spouse. *And sicklike* I nominate my said spouse, and ———, or any three of them, my wife being always one, and, failing of her by death or marriage, the said ———, and
 failing

‘ failing of him, the said ———, and failing
 ‘ him, the major part of the survivors, to be
 ‘ tutors to such of my children as shall
 ‘ be within the years of tutory the time of
 ‘ my death, and that during the whole
 ‘ space of their pupillarity; with power to
 ‘ them, or their *quorum* afore said, to exerce
 ‘ the said office, and to do every thing re-
 ‘ quisite and necessary thereanent. And spe-
 ‘ cially with power to them to make choice
 ‘ of some honest man to have the only intro-
 ‘ mission of my estate, and management of
 ‘ their affairs, and to allow him a salary for
 ‘ his pains.’

The preamble may be thus also; ‘ Yet,
 ‘ considering the certainty of death, and the
 ‘ uncertainty of the time thereof, and be-
 ‘ ing resolved to settle my affairs in my own
 ‘ time, &c.’

I have seen testaments without any pre-
 amble, thus; ‘ I *A.* by these presents, make
 ‘ my latter-will and testament as follows: I
 ‘ nominate, &c.’

If there be two or more legatars, there is
 ordinarily a division of goods and debts,
 thus; ‘ To whom I leave and bequeath the
 ‘ same, to be used and disposed upon at their
 ‘ pleasure, according to the division follow-
 ‘ ing, *viz.* To the said *B.* the whole plenish-
 ‘ ing within or without my said dwelling-
 ‘ house, with the whole debts and rests due,
 ‘ and that shall be due to me by tenants, and
 ‘ all

‘ all debts that shall be due by other persons,
 ‘ for which there shall be no other security
 ‘ in writ, with my best ring or jewel that
 ‘ shall belong to me at the time of my death;
 ‘ declaring that uncutted webs and silver-
 ‘ plate, within my house, whereupon my
 ‘ own name is engraven, my own wearing
 ‘ clothes and *paraphernalia*, or ornaments,
 ‘ rings, watches and jewels, except the best
 ‘ ring or jewel (as said is) shall not be in-
 ‘ cluded in her part. And to the said C. I
 ‘ leave the foresaid uncutted webs of cloath
 ‘ of all sorts, with the silver-plate whereup-
 ‘ on my name is engraven, and all other sums
 ‘ of money, and other moveables falling un-
 ‘ der executry not left to the first; *which*
 ‘ goods, gear, and others above written, I
 ‘ leave to my said executors, with the burden
 ‘ of all my debts that shall be resting unpaid
 ‘ by me at the time of my death, and with
 ‘ the burden of my funeral expences, the said
 ‘ debts and funeral expences to be equally paid
 ‘ betwixt them.’

Tho’ the power of confirming testaments
 be naturally implied, and belongs *ipso jure* to
 all executors; and tho’ the last testament is
 in law a tacit revocation of all former, and
 that, notwithstanding of the testator’s con-
 veying his moveables, and binding himself
 and his executors to pay legacies, yet he
 has an inherent power to annul that deed,
 yea, so as he cannot bind himself not to re-
 cal

cal it; nevertheless I have seen in testaments a power to confirm a clause of revocation of all former testaments, and a reservation of a power to alter or innovate, which were expressed thus; ‘ And with power to them to give up inventories, confirm this present testament, and to do every thing necessary and competent to them as my executors: And, that this my testament and latter-will may be the more valid and effectual, I, by these presents, revoke all former testaments, and other deeds that may militate against, or be prejudicial hereunto, reserving nevertheless to me full power and liberty, at any time of my life, in sickness, or upon death-bed, *vel in ipso articulo mortis*, to alter and innovate these presents, and to dispose otherways upon all or any part of the premisses as I shall think fit, by myself alone, without consent of them, or either of them.’

If you desire that former testaments or legacies, left by anterior deeds, should not be infringed, there must be a declaration in the last testament, intimating that design of the testator, which I have seen in this form; ‘ And declaring, that these presents shall not ways prejudice what I have formerly done, or shall do, in favour of any other friends, either by word or writ.’

If the testator be to burden his executors with legacies, in the clause wherein they are

are burdened with the debts, you say, ‘ And
 ‘ *with the burden of the legacies underwritten,*
 ‘ *to my friends after named, viz.* I leave and
 ‘ bequeath to —— the sum of —— and so
 ‘ forth.’

Sometimes the testator names a factor, and
 appoints the salary, thus; ‘ And I do far-
 ‘ ther appoint, that —— shall have the on-
 ‘ ly intromission with my son’s estate and
 ‘ management of his affairs during his mino-
 ‘ rity, after my decease, and who is to be
 ‘ comptable to my said son’s tutors and cura-
 ‘ tors, for his intromission and administration,
 ‘ yearly, and oftner, as he shall be required,
 ‘ and is to have the allowance of the sum of
 ‘ —— *Scots* money yearly for his pains, beside
 ‘ his other debursments and expences: And,
 ‘ failing of him by death, or otherways, with
 ‘ full power to them, or their *quorum* fore-
 ‘ said, to appoint some one of their own num-
 ‘ ber, or any other they think fit, for the in-
 ‘ tromission with and management of my son’s
 ‘ affairs, and to appoint and allow such a
 ‘ salary for his pains as they shall think rea-
 ‘ sonable.’

Before that, by act of parliament, testators
 had power to nominate curators to their chil-
 dren, they inserted in their latter-will a *fi-*
*dei-commis*s and recommendation to their chil-
 dren to elect the tutors they had named for
 to be their curators, which still may be made
 use of, and the clause is thus; ‘ *As also* I
 ‘ desire

‘ desire my said children, after the expiring of
 ‘ the years of their tutory, to make election
 ‘ of so many of my friends above mentioned,
 ‘ as shall be on life for the time, to be cura-
 ‘ tors to them tiil they attain to the age of 21
 ‘ years complete.’

Until the act of parliament 1696, tutors and curators were liable for omissions, as well as commissions; but since that law was made, a testator being *in liege-poussie* (a), or, which is equivalent, surviving the date of the testament 60 days, (otherways the dispensing with omissions is not warranted) may nominate tutors and curators, and the minor may elect his curators, and dispense with, or discharge all omissions.

To conclude this title, I give the form of a testament, and nomination of a singular contrivance, thus :

‘ I A. nominate and appoint B. and the
 ‘ heirs of his body, to be my only ex-
 ‘ ecutor, universal legatar, and intromitter
 ‘ with my whole goods, gear, debts, sums
 ‘ of

(a) *Liege-poussie*, in Latin *legitima potestas*, is defined by Lord Stair, in his *Instit.* pag. 600. sect. 40. to signify a person in the posture or condition of a liege, (*subject or vassal*) able to serve his Lord in war, not excusable by indisposition or sickness. And it is a term in our law properly applied to people being in health in the act of making their testaments, to which *death-bed* is the opposite term.

of money, and moveables of whatsoever
 nature, pertaining, or that shall happen to
 pertain and be resting to me the time of
 my decease, to whom I leave and bequeath
 the same, with the burden always of the
 payment of my debts, and the provision of
 younger children, and of such legacies as
 shall be left to any of my friends. *And sick-*
like I nominate and appoint *C.* to be sole
 and only tutor and curator, during his life-
 time, to the said *B.* my son, and to all my
 other children that shall be within the years
 of tutory or curatory; and failing of him
 by decease, I nominate and appoint *D.* to
 be sole tutor and curator to my said whole
 children, during the space of their pupil-
 larity and minority, with full power to the
 said *C.* either by himself, or any other whom
 he will be answerable for, to intromit with
 the rents and duties of my son's estate,
 and with his money and moveables: *As al-*
so, with what shall belong or appertain to my
 other children. In which case I, for my-
 self, my heirs and executors, do hereby al-
 low to him the sum of ———— for his
 pains, over and above his necessary expen-
 ces and debursments; and, failing of the
 said *C.* by decease, I allow the said sum of
 ———— to be allowed to the said *D.* for
 his pains in managing of my son and other
 childrens estate and means: Besides that, I
 allow the said *C.* when he cannot attend
 himself,

' himself, to appoint a chamberlain, with
 ' power to intromit, and to give to the said
 ' chamberlain a reasonable fee for his pains
 ' yearly, and for which chamberlain he is to
 ' be answerable. *And because* I have entire
 ' confidence both in the said *C* and *D.* that
 ' they will faithfully and carefully manage my
 ' son's estate to the best advantage, and also
 ' the portions of my other children, *therefore*
 ' I, for me, my heirs and executors, do here-
 ' by expressly declare, that I have named them
 ' with this quality, and they are to accept in
 ' no other terms; but that neither of them,
 ' nor their heirs, nor representatives after
 ' them, are to be charged with any omissions
 ' concerning the said tutory and curatory,
 ' but they, and both of them, and their heirs
 ' and executors, are hereby expressly exoner-
 ' ed and discharged to all intents and purpo-
 ' ses. *And*, in the next place, I request my
 ' friends after named, to wit, *E, F, G* and *H.*
 ' or any three of them, the said *E* or *F.* be-
 ' ing always one of the three, to meet once
 ' in the year, and to revise the accompts of
 ' the intromissions with, and management of
 ' my eldest son's estate, and of the portions
 ' of the rest of my children; *and also*, to en-
 ' quire concerning their education, with
 ' power to them, or their *quorum*, to approve
 ' the accompts, and discharge the same; and,
 ' particularly, not to charge the said *C.* or the
 ' said *D.* in case he succeed to him, with any
 ' omissions,

‘ omissions, as before is mentioned, And I
 ‘ declare that the said friends, then meeting,
 ‘ and considering of, or discharging the said C
 ‘ and D. their accompts, shall not import nor
 ‘ infer upon them, or any representing any
 ‘ of them, their behaviour as tutors or pro-
 ‘ tutors, curators or pro-curators to my said
 ‘ son, or other children, in regard I have on-
 ‘ ly desired them, as friends, to be at that
 ‘ trouble at my request, and they are not to
 ‘ act in that trust, under any legal capacity,
 ‘ but merely as trustees and friends, to whom
 ‘ I have seriously recommended my childrens
 ‘ affairs.’

*A Nomination of an universal Successor,
 with a general Disposition, &c. was,
 in a certain Case, conceived in the fol-
 lowing Form.*

‘ I A. ——— for removing all debates con-
 ‘ cerning the succession to me in goods
 ‘ and estate, as well moveable as immove-
 ‘ able, which, at the time of my decease,
 ‘ shall pertain to me, oblige me to sign a valid
 ‘ disposition and assignation of my said estate,
 ‘ in favour of myself and heirs whatsoever
 ‘ to be procreated of my body; which fail-
 ‘ ing, to any person whatsoever I shall think
 ‘ fit to nominate and appoint, by a writing
 ‘ duly

' duly signed by me ; and, failing such nomi-
 ' nation, to *E.* his heirs and assignies, with
 ' the burden of the liferent of the whole
 ' premisses in favour of ——— during all
 ' the days of her lifetime, and with the pay-
 ' ment of the sum of ——— to ——— the
 ' next term after the liferenter's decease.
 ' And that this my destination may be more
 ' effectual, I, by these presents, now as then,
 ' and then as now, give, grant and dispone to
 ' the heirs of my body, which failing, to the
 ' said ——— my whole means and estate,
 ' lands, goods and gear, moveable and im-
 ' moveable, whatsomever, presently belong-
 ' ing to me, or which at any time hereafter
 ' shall be acquired, and, at the time of my
 ' decease, shall pertain to me, with the bur-
 ' dens above mentioned, giving to him and
 ' them full power, in a legal and more spe-
 ' cial manner, to establish, as accords of the
 ' law, a valid right to every particular com-
 ' prehended under the above general deno-
 ' mination ; secluding hereby all others from
 ' any succession to me in heritage or execu-
 ' try, and from all benefit, except those a-
 ' bove mentioned, can, through my decease,
 ' pretend to ; declaring always, that it shall
 ' still be in my power, during life, *ac in ar-*
 ' *ticulo mortis*, to revoke or alter these pre-
 ' sents ; which, if not revoked or altered, shall
 ' be effectual, tho' not delivered by me, and
 ' tho' found, after my decease, lying among

‘ my other goods and papers, or in the custody of any other person. In witness whereof, &c.

Of Factories.

HAVING treated of such acts and writings as are made and done by the parties themselves personally present, it remains that we set down such as give authority to others, who are called *factores* or *attornies*, to do for them; and this is allowed by law, and upon very good reasons, seeing many times the principal parties themselves are so hindered by infirmity, or by such multiplicity of business and affairs in sundry places, that at one time they cannot be present in all; wherefore factors and attornies are very necessary and profitable for human society, and they are defined to be *persons qualified by law, who, at the request, command, or by consent of the parties concerned, take heed, see to, and take upon them the charge to do other mens business and affairs, in their absence, according to the authority and trust given to them.* The writings giving this power, are called *factories*, *commissions*, or *letters of attorney*.

Here we treat only of powers and factories given by private persons, for the better administration of their fortunes and peculiar affairs; and especially for uplifting money.

ney, and receiving rents, to which the word *commission* is not properly applied, seeing, according to the true use of words, *it rightly signifies a writ expressing the power and warrant, whereby men exercising jurisdiction, either ordinary or extraordinary, authorize others to bear and determine any cause or action*; tho' this word is sometimes extended farther than matters of judgment, and frequently made use of where the subject of the factory is of great value.

Factories are either general or particular, so named from the generality or speciality of the power and of the business expressed in the commission.

A general Factory by a Merchant was thus.

‘**B**E it known, &c. me *A.* merchant in
 ‘*Edinburgh, Forasmuch* I am shortly,
 ‘**GOD** willing, to depart out of this realm,
 ‘for doing my lawful affairs in foreign pla-
 ‘ces, and being resolved to intrust to *B.* the
 ‘ruling and governing of my business here
 ‘in this kingdom, during my absence forth
 ‘thereof, *therefore wit ye me* to have made;
 ‘constituted and ordained, *likeas, &c.* the said
 ‘*B.* my factor, to the effect under-written;
 ‘giving, granting, and committing to him my
 ‘full power, warrant and commission, for
 ‘*me,*

' me, and in my name, during my absence
 ' out of this nation, to ask, crave, receive,
 ' intromit with, and uplift all and sundry
 ' debts and fums of money resting owing
 ' to me, by bond, bill, ticket, decreet, compt-
 ' book, or any other manner of way, by what-
 ' soever person or persons, for whatsoever
 ' cause or occasion, *and to call* and pursue
 ' therefor before whatsoever Judges compe-
 ' tent, as accords of the law, and to obtain
 ' decreets thereupon, and to cause put the
 ' same to due execution, and to use all man-
 ' ner of legal diligence for recovering pay-
 ' ment thereof, and to grant discharges upon
 ' receipt of the same, in whole or in part,
 ' which shall be as sufficient to the receivers
 ' as if I had subscribed and delivered the same
 ' myself; and generally all and sundry other
 ' things anent the premisses to do, use and
 ' exerce, during my absence, that I might do
 ' myself if I were personally present; pro-
 ' mising to hold firm and stable, all and what-
 ' soever things my said factor in the premis-
 ' ses lawfully does, or causes to be done, with-
 ' out revocation. Providing always he makes
 ' compt, reckoning and payment to me, at
 ' my return, of the fums of money so to be
 ' uplifted by him, he being satisfied for his
 ' pains, and having deduction for his expen-
 ' ces.' Registration.

The motive of granting the factory, and of
 chusing the person named, is various, accord-
 ing

ing to the circumstance or intention of the party, thus; ‘ Be it known, &c. me *A.* for divers onerous causes, and good considerations moving me, to have made and constituted, &c.’

Another; ‘ Forasmuchas, by my constant abode and residence in ——— I cannot conveniently attend my affairs in ——— and having certain experience of the faithfulness, honesty and diligence of *B.* therefore, and for certain other onerous causes and considerations, wit ye me to have made, &c.’

Or thus; ‘ Forasmuchas I am resolved, upon grave and weighty considerations, to intrust the management of my affairs to my dear and well-beloved spouse, for the space after-mentioned, therefore, &c.’

Or thus; ‘ Forasmuchas I am now to go abroad for my studies, and being resolved, for the more convenient management of my affairs, to give the trust thereof to *B.* of whose fidelity, care and diligence, both I and my said curators are sufficiently convinced, therefore, &c.’

Or the motive to make choice of the person particularly named may be thus; ‘ And we being fully informed of the sufficiency, care, fidelity and diligence of *B.* to undergo the trust after mentioned, therefore, &c.’

In the clause of constitution, some writers say, *factor and commissioner, or commissioner and*

and factor ; but I observe this is only done in factories for uplifting land-rent, and for managing matters of great value and importance.

The words expressing the power, *to ask, crave, receive, intromit with, and uplift, (or uptake)* are without variation in all sort of factories.

The manner of expressing the subject matter of the commission is various, according to the nature of the thing, and cannot be determined, as will appear from the following examples and cases.

In a factory by a relict to uplift her half of moveables, and the rents of her conjunct fee-lands, it was thus ;—— ‘ To uptake from
 ‘ the executors and intromitters with the
 ‘ goods and gear of the said deceased C. my
 ‘ husband, my half, falling and pertaining to
 ‘ me, as relict, by the law and practise of
 ‘ *Scotland*, of his whole goods, gear, debts,
 ‘ sums of money and others, which pertained
 ‘ and were resting to him the time of his
 ‘ decease, who deceased in the month of ——
 ‘ last bypast ; and likewise to ask, crave, re-
 ‘ ceive, intromit with, and uptake the whole
 ‘ mails, farms, kains, customs, casualties, pro-
 ‘ fits, and duties of the lands, and others,
 ‘ belonging to me in conjunct fee and life-
 ‘ rent, of this instant crop and year of GOD
 ‘ 1764, *and sicklike* of all years and terms
 ‘ thereafter,

‘thereafter, during my lifetime, and, if need
‘be, to call and pursue therefor, &c.’

In factories which are special, the sums, bonds, conveyances and diligence, are expressed thus; — ‘To uplift from *C.* the
‘sum of 500 merks *Scots* money of principal,
‘and whole bygone annualrents thereof resting unpaid, contained in a bond granted by
‘him to *D.* and failing of him by decease,
‘to *E.* his lawful daughter, her heirs or assignies, of the date — and, in an assignation granted by the said *E.* now my spouse,
‘to me, dated — whereupon I raised letters of horning, poinding and arrestment,
‘and, by virtue thereof, caused arrest —
‘in the hands of — his tenants,’ and so forth if there be more bonds. To these particulars one may subjoin (if there be occasion for it, and if it be the will of the granter so to do) a general clause, thus; ‘And sicklike to ask,
‘crave, receive and uplift, all and sundry other debts and sums of money resting owing
‘to me, by whatsoever person or persons, for
‘whatsoever cause or occasion, &c.’

This clause will be more illustrated by the examples hereafter set down.

The clause, where the manner of exercising the power is mentioned, varies likewise, according to the nature of the thing, and, as was said concerning the power in assignations, so, in the above case of a factory, to intromit with a relict’s share of moveables, and the duties,

duties of her liferent-lands, the power was
 thus; ——— ‘ And, if need be, to call and
 ‘ pursue therefor, as accords of law, either
 ‘ in my name, or their own, as they shall
 ‘ think expedient, and to grant acquittan-
 ‘ ces and discharges thereupon, which shall
 ‘ be as sufficient to the receivers, as if I had
 ‘ made and subscribed the same myself; and
 ‘ to remove, out-put and in-put the tenants
 ‘ and possessors of the lands and others fore-
 ‘ said, and to set the same for the accustomed
 ‘ duty: And, in like manner, to constitute pro-
 ‘ curators and advocates to pursue and defend
 ‘ for me, in all actions and causes to be pur-
 ‘ sued at my instance, or against me: *As also,*
 ‘ to substitute and depute factors and commif-
 ‘ sioners under them for managing of the pre-
 ‘ mises, sicklike, and as freely, in all respects,
 ‘ as I could do therein myself, if I were per-
 ‘ sonally present.’ A farther variety in ex-
 pressing this clause, will appear from the cases
 below.

The promise to ratify is more briefly thus;
 immediately after the power, say, *Which I pro-*
mise to hold firm and stable, providing, &c.

The provision that the factor shall be ac-
 comptable is also various; ——— ‘ Providing
 ‘ always that the said *B.* his heirs and exe-
 ‘ cutors, shall be bound and obliged to make
 ‘ compt, reckoning and payment to the
 ‘ said *A.* his heirs and executors, or to us, or
 ‘ to any other who shall have power to call him

‘ to

to an accompt for the time, for the behoof of the said *A.* and his foresaids, of his whole intromissions with the said *A.*'s rents, rests and money, and that yearly, or oftner, as he shall be required; and likewise that he shall do legal and exact diligence for ingathering of the rents and money which he is hereby intrusted to uplift, and that he shall omit no duty incumbent on him for uplifting thereof, or management of the trust that is hereby committed to him, conform to a particular bond apart, granted by him to us thereanent, and which is relative to this present factory, allowing to the said *B.* his expence, &c.'

After the provision to compt, writers place the clause expressing that allowance is to be given to the factor of his charges and expence, and of a *premium* for his pains, which, for the most part, are mentioned in general terms; the expence to be wared out cannot be determined, but the fee or salary is sometimes liquidated, and they are thus; 'Allowing always to the said *B.* the sum of 500 *merks* yearly for his pains, and also his necessary expence for doing the said diligence;' and when there is no salary mentioned, that part may be omitted, keeping the rest of the stile, thus; 'Providing my said factor shall be holden to make compt, reckoning and payment to me, of the rents, goods and gear pertaining to me, according

to

‘ to his intromissions therewith, with deduction
 ‘ always of the charges and expences which he
 ‘ shall happen to deburse concerning the pre-
 ‘ misses, conform to his accompt of the same.’

Some express the manner how these ac-
 counts are to be cleared and proven, as, ‘ de-
 ‘ ducing the necessary charges and expences
 ‘ ——— upon their honest word and declaration
 ‘ under their hands.

To illustrate this sort of stile I give the
 following examples and cases. A factory
 by a minor with consent of his curators, the
 motive and constitution being premised, say,
 ‘ ——— Committing to him full power, &c.
 ‘ for me, and my said curators, and in our
 ‘ name to ask, crave, receive, intromit with,
 ‘ and uplift the whole mails, farms, kains,
 ‘ customs, casualties, profits and duties of
 ‘ whatsoever lands pertaining to me within
 ‘ this kingdom, for this instant crop and year
 ‘ of GOD ——— with all rests of whatsoever
 ‘ preceeding years; *as also*, all and whatso-
 ‘ ever sums of money addebted, or that shall
 ‘ happen to be addebted to me within the said
 ‘ realm, both principal sums and profits
 ‘ thereof, from my debtors. *Declaring* ne-
 ‘ vertheless, that, at the uplifting of the prin-
 ‘ cipal sums, he shall always be obliged to take
 ‘ the advice and consent, in writ, of the said
 ‘ C. and, failing of him by decease, of the
 ‘ said D. and to call and pursue therefor as
 ‘ accords of the law; and to give acquittan-
 ‘ ces,

' ces, renunciations and discharges there-
 ' upon, and also to give assignations and
 ' translations to bonds, for which he shall
 ' transact, with advice and consent of the
 ' said C. and, failing of him by decease, of
 ' the said D. as said is, which shall be as suf-
 ' ficient to the receivers, as if I, and my said
 ' curators, had subscribed and delivered the
 ' same ourselves; and to ware, employ and
 ' bestow any money that he shall uplift, be-
 ' longing to me, upon sufficient security, and
 ' to take the bonds that shall be granted for
 ' the same in favour of myself, my heirs,
 ' executors, or assignies; *and also*, to make
 ' and constitute, place and displace, at his plea-
 ' sure, advocates and procurators for pursuit
 ' and defence of all and whatsoever actions
 ' intended at my instance, or against me; *and*,
 ' *farther*, to set tacks of my lands, in case
 ' any of the present tacks expire, or that the
 ' tenants shall happen to be removed, al-
 ' ways with advice of the said C. and, failing
 ' of him by decease, of the said D. and gene-
 ' rally to do all other things necessary and
 ' convenient for the managing of whatsoever
 ' my affairs within the said kingdom of Scot-
 ' land, from time to time, during my minori-
 ' ty, as said is, *sicklike*, and as freely, in all
 ' respects, as I might do therein myself if I
 ' were personally present, *promising*, &c.'

A more ample form of factory and com-
 ' mission by a husband to his wife, was thus;

H h

' Giving

Giving, &c. to intronit with and up-
 take the whole mails, farms, kains, cu-
 stoms, casualties, profits and duties of my
 whole lands, lordship and barony of —
 and whole other lands and heritages be-
 longing to me, of this instant crop and
 year of GOD ————— with all rests
 of whatsoever preceeding years, and like-
 ways of all years and terms to come, dur-
 ing the space after mentioned: *As also*, all
 and whatsoever sums of money addebted,
 or that shall happen to be addebted to me
 within this kingdom, both principal sums,
 profits and penalties thereof, from my de-
 bitors, and from the tenants and possessors
 of the lands and others aforesaid, and from
 my factors and chamberlains, and all o-
 thers whom it effeirs, and to call and pur-
 sue therefor as accords of the law, either
 in her own name, or mine, as she shall
 think expedient, and to give acquittances
 and renunciations thereupon, or, if need
 be, assignations, translations, dispositions,
 or other rights thereof, which shall be as
 sufficient to the receivers, as if I had made
 and subscribed the same myself. And to
 apply the first and readiest of the intromis-
 sions, next after the maintenance of herself
 and our family, for the payment of cham-
 berlains and servants fees, and what mini-
 sters stipends, or feu-duties, or school-ma-
 sters fees, and incident publick burdens,
 are,

are, or shall be due forth of my estate:
 And, in the next place, for payment of the
 bygone and current annualrents of the whole
 debts due by me, and what shall be over, for
 the payment of principal sums resting by
 me to my creditors. *As also*, to intent, pro-
 secute, and follow forth actions and pro-
 cesses of reduction, improbation, declarator,
 actions of relief, or for payment of what-
 soever debts due to me, and to prosecute
 and follow forth the same; and likewise
 to compone and agree thereanent, and to
 make and constitute, place and displace, at
 her pleasure, procurators, advocates, &c.
as in the former stile. And to constitute bai-
 lies and chamberlains of my whole lands
 and barony, and to give them such allow-
 ance as she shall think reasonable, and to
 receive and enter the heirs of all my vas-
 sals, to all lands and others wherein their
 predecessors have died, or shall happen to
 die, last vested and seized, as of fee holden
 of me by precepts of *clare constat*, or pre-
 cepts upon retour, as she shall think expe-
 dient. And likewise to receive all re-
 signations to be made by any of my vas-
 sals, of my lands and heritages holden of
 me, in favour of whatsoever person or per-
 sons, and to grant charters thereupon. *And*
sicklike, to confirm all charters made, or to
 be made by any of my vassals, to whatsoe-
 ver person or persons in liferent, conjunct

• fee, heritably, or otherways, of whatsoever
 • lands, or others, holden of me ; and to grant
 • charters upon apprisings, adjudications de-
 • duced, or to be deduced, at the instance of
 • whatsoever person or persons, of whatsoever
 • lands, heritages, or others, holden of me,
 • without alteration always of the former
 • holdings. *And, in like manner*, to grant and
 • dispoſe preſentations, gifts of ward, non-
 • entries, marriages, liſerent eſcheats, and o-
 • ther casualties of my ſaid vaſſals, fallen, or
 • that ſhall happen to fall in my hands, and
 • to make and ſubſcribe with her hand, and
 • cauſe ſeal with my ſeal, all preſentations,
 • precepts of ſaſine, charters of confirmati-
 • on or reſignation, charters upon adjudica-
 • tions or comprifings, gifts of ward, non-
 • entry and marriage, liſerent-eſcheats, and
 • other ſecurities requiſite to the effect above
 • ſpecified, and to ſet down and modify the
 • compoſitions to be paid to me for the
 • ſame ; and to ſet tacks of my whole lands
 • and poſſeſſions for the old duties, or for the
 • greateſt duties that can be had for the
 • time : And to build, beet and repair my
 • manor-places, houſes, buildings, yards, or-
 • chards, woods, parks and dykes thereof,
 • and to make ſuch policy about the ſame as
 • ſhe ſhall think expedient ; and to deburſe
 • of my own money all charges requiſite
 • concerning the premiſſes ; and to grant
 • bonds, heritable or moveable, or contracts.

of wadset, for security of the same, con-
 taining obligations to invest, procurator-
 ries of resignation, assignation to the mails
 and duties, and to the writs and evidents,
 and right to the teinds and annuities there-
 of, and clause of absolute warrandice, up-
 on me, my heirs and executors; and to
 bind and oblige me and them to repay the
 sums to be borrowed, and for which the
 said securities shall be granted, at such terms
 and times, and under such penalties as she
 shall agree with the parties, and that as well
 for debts that are already due by me, whe-
 ther principals or annualrents, as for what
 she shall hereafter borrow for my use: And
 generally to do all other things requisite
 and necessary thereanent, which to the of-
 fice of factory and commission in such ca-
 ses, by the law and custom of this king-
 dom, is known to appertain, and which I
 might do myself if I were personally pre-
 sent, promising to hold firm and stable all
 and whatsoever things that my said spouse
 does, or causes to be done in the premisses,
 without revocation: *Providing always*, that
 all heritable and moveable bonds, wadsets,
 discharges of principal sums contained in
 bonds, assignations, translations, dispositi-
 ons, renunciations, letters of bailiary and
 chamberlainry, charters, presentations, pre-
 cepts, gifts of ward, escheats, non-entries,
 disclamations, and other casualties falling

* to me as superior, tacks, warnings of re-
 * nants and the clearing of accompts with
 * chamberlains, to be granted by my said
 * spouse, shall be made with advice and con-
 * sent in writ of my friends after named,
 * viz. ——— or any two of them, the said
 * ——— being always one, and failing of
 * him, the said ———, and, failing of him by
 * death or absence, the consent of the ma-
 * jor part of the remaining friends. And as
 * to all other matters, except these immedi-
 * ately above mentioned, she is hereby war-
 * ranted and allowed to do the same by her-
 * self alone: *Providing always*, that my said
 * spouse shall be holden and obliged to make
 * just compt, reckoning and payment to me,
 * or my heirs or assignies, (*secluding my exe-*
 * *cutors*) of her intromissions by virtue of
 * this factory and commission, and that yearly,
 * or oftner, either to me, or my forefaids, or
 * to my friends above named, or their *quo-*
 * *rum*, as she shall be desired; and this facto-
 * ry to endure and continue for this instant
 * crop and year of GOD ——— and for the
 * space of ——— years, and thereafter till it
 * be recalled by me in writ. *Registration for*
preservation only.

A factory, chamberlainry and bailiary,
 granted by a landed gentleman infest, with
 power to hold courts, was thus; ' Giving, &c.
 ' to him full power, warrant and commissi-
 ' on

on for me, and in my name, to ask, crave;
 receive, intromit with and uplift the whole
 victual and money-rent due and payable
 to me for the crop ——— by the tenants
 of my lands and barony of ——— and to
 grant discharges to the tenants upon the
 receipt thereof, which shall be as sufficient
 to the receivers, as if I had subscribed and
 delivered the same myself, and with power
 to him to sell the farms as he shall from time
 to time be ordered by me, to be delivered
 at *Edinburgh*, or at *Leith*, or at any place of
 the like distance from the respective lands,
 I being always satisfied with the price and
 security before the bargain be closed: And
 generally with power to the said *B.* to do
 all and sundry other things for the inga-
 thering and recovering the said rents, &c.
 that I might do myself, if I were personal-
 ly present, promising to hold firm and sta-
 ble, &c. *And farther, wit ye me* to have
 nominated and constituted, as I, &c. the said
B. during the continuance of this factory, my
 very lawful and irrevokable baillie, to the
 effect after specified, of my lands and ba-
 rony of ——— and other lands above
 specified, belonging to me, lying within
 the foresaid parishes, giving, granting, and
 committing to him my very full power,
 special mandate, express bidding and charge
 for me, and in my name, to set, begin, af-
 fix, fence, hold and continue baron-court,
 or

“ or courts (a), as oft as he shall think expedient, and that upon the ground of any part

(a) By an act of the *British* parliament, the 20th year of King *George II.* abolishing the heritable jurisdictions in *Scotland*, baron-courts are now put under several regulations, with respect to their jurisdictions, both in civil and criminal cases; wherefore I thought proper to give here a full excerpt thereof from the act itself. The act, amongst other things, takes notice, ‘ That ‘ the jurisdiction in capital cases, that was heretofore ‘ granted to many heritors or proprietors of lands ‘ within that part of *Great Britain* called *Scotland*, ‘ whose lands were erected by the crown into baronies, or granted *cum fossa et furca*, or with power of pit and gallows, or with the like words importing such capital jurisdiction, hath been long discontinued, or fallen into disuse, as to the exercise thereof, and it is now unnecessary and improper that the right or title of such jurisdiction in barons should be any longer retained: And whereas it is also reasonable that some farther regulation should be made relating to the jurisdiction of such barons, or of other heritors of lands who are infest *cum curiis*, or intitled to the jurisdictions of barons, or other lower jurisdiction, be it enacted, That, from and after the 25th of *March 1748*, no heritor or proprietor of lands within *Scotland*, which had been erected into a barony or granted with other lower jurisdiction, or their bailies, shall, by virtue thereof, have, exercise, or enjoy any jurisdiction whatsoever in capital cases; and that no such baron, or other heritor of lands, infest *cum curiis*, or their bailies, shall, by virtue thereof, enjoy any jurisdiction in any criminal cause whatsoever, other than assaults, batteries and smaller crimes, for which the punishment to be inflicted shall only be by a fine not exceeding 20 shillings *sterling*, or by setting the delinquent in the stocks for any time

of the lands and others above rehearsed,
and therein to administer justice in all cases
to

not exceeding three hours in the day time ; which
fine shall be levied by distress, or pouding of the
goods of the delinquent ; and, in default of such di-
stress, by imprisonment of his or her person, for any
time not exceeding the space of one month ; and
that, as to civil causes, it shall not be lawful or com-
petent from and after the said 25th day of *March*,
for any such baron or heritor, or their bailies, to
hold plea, or judge in any cause, where the debt or
damages shall exceed the sum of 40 *s. sterling*, other
than for recovering and uplifting from the vassals,
tenants and possessors of the lands and heritages
of such baron or heritor, the mails and duties, or
rents and profits thereof, or for recovery of mul-
tures or services payable or prestable to their mills :
and, in all other civil causes, it shall not be lawful for
such courts to judge in cases of higher value than
the sum aforesaid, by virtue of any prorogation of
the jurisdiction or consent of the parties litigant, for
that purpose ; any law, custom or usage to the con-
trary notwithstanding. And that every decree, sen-
tence, judgment and proceeding, by and before any
such baron, heritor, or their bailies, contrary to this
act, shall be absolutely void and null to all intents
and purposes whatsoever.' And it is farther requir-
ed by this act, ' That every baron, or other heritor
of lands in *Scotland*, shall enter into a book to be kept
by the sheriff-clerk of the county, the house, room,
or place, which such baron or heritor hath appropri-
ated, or shall provide and appropriate for being used
as a prison, for rendering effectual the jurisdiction
competent to him by law. — And it shall not be law-
ful to any baron, or his bailie, to cause any person to
be imprisoned in any place but what shall be so en-
tered ; and every such place shall be so situated, and
have

‘ to be intended before him, conform to the
 ‘ laws and practise of this realm; and to
 ‘ cause

‘ have such windows or grates open to inspection from
 ‘ without, as that it may be practicable for any friend
 ‘ of the party imprisoned to visit, see and converse with
 ‘ the prisoner, when he shall be so minded. — And that
 ‘ every baron shall, for every offence against this act,
 ‘ forfeit the penalty of 20 *l. Sterling*, with costs to
 ‘ the party injured. — And the sheriffs, or their de-
 ‘ puties, are ordained to inspect the prisons so en-
 ‘ tered, and, if they be unhealthy, or not agreeable
 ‘ to these regulations, to prohibit the same. —
 ‘ And no person is to be committed, for any assault,
 ‘ battery, or smaller crime, but by a warrant, or or-
 ‘ der in writing, expressing the cause for which such
 ‘ person is imprisoned; which warrant is to be entered
 ‘ at large in a book to be kept for that purpose, and
 ‘ extracts thereof transmitted to the sheriff of the
 ‘ county every six months, there to remain on record.’
 — But, by this act, the jurisdiction of heritors, as to
 fairs and markets, coal and salt-works, and mines,
 are reserved as formerly, with this exception, ‘ That
 ‘ this jurisdiction is not to extend to loss of life, or
 ‘ demembration, which are thereby lately abolished. —
 ‘ And no bailie shall, after the said 25th *March*, offi-
 ‘ ciate in any baron’s or other court, without first qua-
 ‘ lifying himself, by taking the oaths appointed by law,
 ‘ to be taken by persons in offices of publick trust,
 ‘ and causing a certificate of his having done so, to be
 ‘ registrated in a book to be kept for that purpose, by
 ‘ the clerk of the shire or burgh where such person
 ‘ resides, under the penalty of 10 *l. Sterling*, and six
 ‘ months imprisonment, unless or until the said penal-
 ‘ ty be paid; the one half of this fine is to go to his
 ‘ majesty’s use, and the other to the informer.’

This act likewise regulates poindings, thus; ‘ That
 ‘ from and after the said 25th of *March*, it shall be law-
 ‘ ful

cause suits be called, amerciate absents, punish transgressors, and to uplift the fines and amerciements of the foresaid courts, and, if need be, to cause poind and distrenzie for the same; and generally all and sundry other things in the premisses to do, use and exerce, which to the office of bailiary, &c. sicklike, &c. as if I were personally present, promising to hold firm, &c. And I do declare, that I allow to the said B. the fines and amerciements of courts that shall be holden by himself, for his pains and travel in exercising the foresaid office of bailiary, which is to continue and endure for the space of one year after the date hereof, and longer, except I shall think fit to revoke the same. *It is also* hereby declared, that the inclosure in ——— which was sometime posselt by ——— and lately by the tacksmen of my estate, is not to belong to the said B. but he is to be comptable for the

ful for the officer executing poindings within Scotland, to carry the goods poinded, or samples thereof, in such cases where the carrying of samples is practised, to the market-cross of that royal burgh, or burgh of regality, or barony, (as well such whereof the jurisdiction is by the said act abrogated or regulated, as those whereof the jurisdiction is saved entire) which shall lie nearest to the place where such poinding was inchoated, which shall be as sufficient, to all intents and purposes, as if such goods, or samples, as aforesaid, had been carried to the market-cross of the head burgh of the shire; any law, custom or usage to the contrary notwithstanding.

' the rent thereof to me; *providing* always,
 ' that the said *B.* his heirs and executors, be
 ' holden and obliged to make just compt,
 ' reckoning and payment to me, of his whole
 ' intromissions with my estate, for the fore-
 ' said year of ——— and thereafter dur-
 ' ing the continuance of this factory, and
 ' yearly, or oftner, as he shall be required.
 ' *As also*, that he be holden to use diligence
 ' for recovery of my said rents, deducing
 ' and allowing to the said *B.* the sum of 400
 ' merks *Scots* of fee, for his being factor,
 ' and going and receiving the victual and mo-
 ' ney-rent, and in felling and delivering the
 ' same out again; and, in satisfaction of his
 ' trouble and expences in doing thereof, al-
 ' lowing also to him that house in ———
 ' presently possess'd by himself and his fa-
 ' mily, with grass for a cow and a horse,
 ' to be pastured with my own in summer,
 ' and to have fodder for them in the winter,
 ' conform to a particular bond granted by the
 ' said *B.* to me, of the date of these pre-
 ' sents: Reserving power to me, notwith-
 ' standing of the premisses, to modify such
 ' amerciaments of court and unlaws as I
 ' shall think exorbitant, at my pleasure.' *Re-*
gistration.

Factories may not only be granted to up-
 lift money, &c. but also for other ends and
 uses, according to the exigence of the par-
 ties, as to sell lands, and it is thus; ' With
 ' power

power, &c. to meet, treat, and agree with any person or persons that are willing to buy the lands of C. and woods growing on the same, and to consent for me, and in my name, to any vendition of the said lands and woods, for payment of my creditors that have the best and most effectual rights on the said lands, and to subscribe any disposition for me, and in my name, of the said lands and woods, in favour of any person that shall give most for them, and also to consent to any decret of sale of the same that shall be thought necessary, and for the satisfaction and payment of my creditors: With full power to the said B. factor aforesaid, without my presence or consent, to do in the said affair as amply as if I were present, and that without any other consent than this present commission, which I hereby declare to be a sufficient security to any person whatsoever who shall happen to buy the said lands and woods, &c.

Factories are granted with power to perform the constituent's part of a decret arbitral, in this manner; — And because there was a decret arbitral pronounced by — upon — determining some differences that were betwixt me and — and there being several parts of the said decret arbitral not fulfilled by me, therefore, with power to the said B. with consent of my curators above mentioned, con-

* Tenters hereto, to fulfil the foresaid decreet
 * arbitral in every article thereof that is ap-
 * pointed to be done by me, and to grant
 * what writs, rights and warrandice, upon
 * me and my heirs, are necessary in order
 * thereunto; *providing always*, that my said
 * sisters fulfil in my favour their parts of the
 * same decreet.

Factories may likewise contain a power to
 call tutors to accompt, thus; — ‘ And, in
 ‘ like manner, with power to the said *B.* to
 ‘ call and pursue my tutors to compt and
 ‘ reckon for their intromissions and manage-
 ‘ ment of my estate during the time of my
 ‘ tutory, and to obtain decreets, and to use
 ‘ all manner of legal diligence, both con-
 ‘ cerning that matter, and the exhibition and
 ‘ delivery of the charters, writs, rights and
 ‘ evidents of my estate, personal and real.

Because people living in *North Britain* may
 have business in the south parts of this island,
 or in *America*, to be negotiated by a factory,
 I give you the form of a letter of attorney,
 as used in these parts. ‘ Know all men, by
 ‘ these presents, That I *A.* have made, ordain-
 ‘ ed, constituted and appointed, as I make,
 ‘ ordain, constitute and appoint *B.* my true
 ‘ and lawful attorney in the province of *East-*
 ‘ *New-Jersey* in *America*, and in the said pro-
 ‘ vince for me, and in my name, and for my-
 ‘ self, to ask, demand, call for and require, all
 ‘ lands, rents, goods, or any manner of
 ‘ stock

' stock whatsoever belonging to me the said
 ' *A.* in the said province, with such families
 ' and servants as the said *B.* shall cause trans-
 ' port from this kingdom of *Scotland*, or else-
 ' where, to the said province on my account,
 ' or as hereafter shall be sent or transported
 ' thither upon my account; giving, and also
 ' granting power to my said attorney, to sell,
 ' let, or dispose of any of my lands whatso-
 ' ever, within the limits of any town or city
 ' in the said province, or elsewhere, as the
 ' said *B.* shall think fit; empowering him
 ' hereby sufficiently to make such rights and
 ' titles, to any person whatsoever to whom
 ' he shall let, or otherways dispoise of any
 ' of my lands, either in town, city or coun-
 ' try, within the foresaid province, as may be
 ' good, valid and sufficient, to all intents and
 ' purposes, as I myself could do, if I were there
 ' personally present. *And also*, to do, perform
 ' and execute all and every other lawful and
 ' reasonable acts and things as shall be need-
 ' ful, both for obtaining, taking up, or pro-
 ' curing any of my lands, rents, goods, or
 ' stock aforesaid, or for settling, planting,
 ' or improving the same, or for selling, let-
 ' ting, or otherways disposing thereof, upon
 ' such terms and conditions as the said —
 ' shall think fit. *Giving*, and by these pre-
 ' sents granting unto my said attorney, my
 ' full and absolute power in the premises;
 ' ratifying and holding firm all and whatsoe-

• ver my said attorney shall lawfully do, or
 • cause to be done, by virtue of these pre-
 • sents. In witness whereof, I have hereun-
 • to set my Hand and Seal, the ——— Day of
 • ——— the 3d Year of the Reign of King
 • *George III. over Great Britain, France and*
 • *Ireland, &c. Anno Domini 1764.*

I have thought fit to add a general letter
 of attorney to receive debts. ‘ Know all
 • men, by these presents, that I *A.* have made,
 • ordained, authorised, constituted and ap-
 • pointed, and by these presents do make,
 • &c. *B.* my true and lawful attorney, for
 • me, and in my name, and to my use, to
 • ask, demand, sue for, recover and receive
 • of ——— all such sum and sums of mo-
 • ney, debts and demands whatsoever, which
 • now are due and owing unto me the said *A.*
 • by and from — and, in default of payment
 • thereof, to have, use and take all lawful
 • ways and means, in my name, or otherways,
 • for the recovery thereof, by attachment,
 • arrest, distress, re-entry, or otherways,
 • and to compound and agree for the same,
 • and, on receipt thereof, acquittances or
 • other sufficient discharges for the same, for
 • me, and in my name, to make, seal and de-
 • liver, and to do all lawful acts and things
 • whatsoever concerning the premises, as ful-
 • ly, in every respect, as I myself might or
 • could do, if I were personally present, and
 • an attorney or attorneys under him, for the
 • purposes

‘ purposes aforeſaid, to make, and at his plea-
 ‘ ſure to revoke, hereby ratifying, allow-
 ‘ ing and confirming all and whatſoever my
 ‘ ſaid attorney ſhall in my name lawfully do;
 ‘ or cauſe to be done, in and about the premiſ-
 ‘ ſes, by virtue of theſe preſents. In witneſs
 ‘ whereof, I have hereunto ſet my hand and
 ‘ ſeal, the — day of — &c.

Of Ratifications.

WHen deeds are granted by perſons,
 who, upon account of their ſtate and
 condition in civil ſociety, are not effectual-
 ly tied and legally obliged by the writings
 which they ſubſcribe, in order to make theſe
 acts and obligations, or conveyances, valid,
 ratification of them, when they arrive at a
 legal capacity, is neceſſary; in forming where-
 of the writer is to conſider the ſtate and con-
 dition of the granter, if, or not, he be liable
 to the ſame exceptions as at the time the ori-
 ginal deed was made. And, next, the nature
 of the obligation or deed that is about to be
 ratified, and wherein it was defective.

The deeds which need ratification, are
 ſuch as are granted by minors, without con-
 ſent of their curators, or when the cura-
 tors conſent to a deed whereby the minors
 are leſed, or which are without the bounds

of their administration, as alienation of lands without decret of the Lords of session. *2do*, Deeds by a factor, where the warrant to do these is wanting or doubtful. *3tio*, Donations betwixt man and wife must be ratified by the granter after dissolution of marriage. Now, any thing that is beyond a rational life-rent-provision, in the case that there was no contract of marriage, or what is over and above the provisions and obligations in the original contract matrimonial, are, in law, esteemed to be donations between man and wife, and revokable. Not only so, but deeds done by the wife, with consent of the husband, in favours of third parties, are liable to exceptions, and in some measure, presumed to be done more out of obedience, respect and reverence to the husband, than out of free-will: So that, upon her proving that she was coerced and compelled to sign the writ, and that she did it of purpose to keep peace in the family, and not of free-will, the same is reducible. As likeways, to remove all presumption of force and fear, third parties are in use to cause women ratify their deeds in presence of a judge, while their husbands are removed from them. *4to*, Deeds granted by persons who are under coercion or constraint, in favour of those who detain them, or who out of fear may conus them to do these deeds, must be ratified when the granters are out of the state of force, fear, or concussion,

cession; otherways the same are revokable: As for example, obligations or conveyances by persons under caption, or when they are incarcerated, in favour of the debtor, in matters extrinseck to the ground of the caption, are in law presumed to be made *metu carceris*. And gratuitous or inadequate deeds, done by a person suspected or tainted of any crime, in favour of a minister of state, in whose power it is to prosecute or let fall the accusation, are revokable upon the head of concussion. 5to, Persons in the anguish and pain of sickness, and labouring under other corporal infirmity, whereby they become easy and exposed to the importunity of designing people, if, in that state, they grant any gratuitous right or obligation, the same is liable to exceptions, and should be ratified by the granter when recovered, and in *liege-paustie*.

In this ratification you briefly narrate the writ to be ratified, and then subsume upon the cause or motive of granting the ratification, which is various, according to the state and condition of the granter, or defect in the writ; after which follows the stile of the ratification, the words whereof are, *Ratify, confirm, and approve*, or more briefly, without narrative or subsumption, you may proceed directly to the clause of ratification, as in the following form.

Of

Of a Ratification of a Contract of Marriage by the Husband, when come to the Years of Majority.

I *A.* by these presents, ratify, confirm and
 approve the contract matrimonial, of
 the date ——— past, and perfected betwixt
 me on the one part, and *B.* now my spouse,
 eldest lawful daughter to ——— with the
 special advice and consent of the said ———
 on the other part, in the whole heads, clau-
 ses, articles, obligations, provisions and
 conditions therein expressed; and I will
 and grant, and for me, my heirs and suc-
 cessors, declare and ordain, that this ratifi-
 cation, and generality thereof, is, and shall
 be as valid and sufficient, to all intents and
 purposes, as if the same contract were word
 by word inserted and ingrossed herein;
 whereanent, and concerning all defects and
 imperfections that may be objected against
 the validity thereof, and this confirmation
 of the same, I have dispensed, and, by these
 presents dispense for ever. And I bind and
 oblige me, my heirs, successors and execu-
 tors, to warrant this ratification to be good,
 valid, and sufficient to the said *B.* my spouse,
 and to all others concerned, at all hands,
 and against all deadly, as law will. And I
 consent that execution shall pass upon the
 fore-

‘ foreſaid contract, and this ratification, at the
 ‘ instance of the ſaid ——— and ——— or ſuch
 ‘ of them as ſhall be alive for the time; and,
 ‘ failing of them by deceaſe, at the instance
 ‘ of their heirs againſt me, for implement of
 ‘ the foreſaid contract, and this ratification
 ‘ thereof, in favour of the ſaid B. and the
 ‘ heirs or children procreated, or to be pro-
 ‘ created betwixt us.’ Registration.

All rights made by a wiſe to her husband,
 or any third party with his conſent, ought to
 be ratified by her in preſence of a judge, be-
 fore whom ſhe is to declare, without the pre-
 ſence of her husband, that ſhe was not com-
 pelled to do that deed, and ſwear that ſhe
 ſhould never quarrel the ſame; and the par-
 ty in whoſe favour the deed is granted takes
 instruments thereupon in the hands of a no-
 tary. Such ratifications are generally wrote
 on the back of the deed, and may be in theſe
 or the like words;

‘ At ——— and of his majeſty’s reign the
 ‘ ——— year, the which day, in preſence of
 ‘ ——— one of the baillies of the burgh of
 ‘ ——— and alſo in preſence of me notary-
 ‘ public, and witneſſes ſubſcribing, compar-
 ‘ ed perſonally the within deſigned A. and,
 ‘ being forth of the preſence of her husband,
 ‘ did ratify and approve the within written
 ‘ diſpoſition in the haill heads, articles, and
 ‘ clauſes thereof, and declared that ſhe was
 ‘ noways compelled, coacted or ſeduced to
 ‘ the

• the granting of the same, but that she did
 • the same of her own free will and proper
 • motive, and gave her great oath that she
 • should never quarrel, impugn, or come in
 • the contrary thereof, directly or indirectly,
 • in judgment, or outwith the same in time
 • coming, as she should answer to GOD;
 • whereupon the within designed B. asked
 • and took instruments in my hands: These
 • things were done, place, day, month, year
 • of GOD, and king's reign respectively a-
 • bove written, before and in presence of
 • ————— witnesses specially called and re-
 • quired to the premises.

Of Revocations.

IN those cases where ratification is needful
 to make the right valid in law, revocati-
 ons are required to make such deeds of no
 effect; and that more especially because ta-
 citurnity and silence in a space of time have
 the effect of a consent and tacite ratification:
 As when a minor, who has no curators,
 grants in minority a deed that is quarrellable,
 which, if not revoked, and if no reduction
 be raised by himself *intra annos utiles*, or by
 his heir, is valid in law; whereas, on the
 other hand, when a minor, who has cura-
 tors, does any deed without their consent,
 the same is *ipso jure* null, and needs not be
 revoked.

revoked. And, in like manner, donations *inter virum & uxorem morte confirmantur*. And the same may be said of other compulsory deeds, where force, fear, fraud, or infirmity was the cause, or gave occasion to the contract or obligation. All which deeds ought to be expressly revoked by the granter in his lifetime. So that, except the granter immediately died after the signing of such deeds, his heir, after a certain space of time or years, hath not the privilege of revoking. These revocations are either tacit or express: The tacite are, by doing deeds contrary to the former; and seeing both cannot subsist, *posteriora derogant prioribus*, or by intending summons of reduction of those anterior deeds. The express revocations are, by a formal writing, and letter of revocation, signed. Revocations in writing are absolutely necessary, when a major makes a bond or conveyance, under the condition that it shall only be valid and effectual in case the same be not revoked by him, in writing under his hand, at any time in his life, *ac etiam in articulo mortis*.

The narrative, (where the deed to be revoked is briefly mentioned) with the subsumption and cause of making the revocation, which is various, according to the circumstances of parties, and quality of the (right) being premised, the clause of revocation followeth, the words whereof are, *re-*
vokes,

voke, cass, annul, retreat and rescind, tho' most commonly writers make use of the word *revoke* alone, as in the following examples.

Revocation of Deeds in Minority by the Granter, after his perfect Age of 21 Years complete.

BE it known, &c. me *A.* being now past my lawful age of 21 years complete, *forasmuch* I, during my minority, was moved and induced to subscribe the contracts, bonds, and others after specified, to wit, ———— (*Here mention these briefly*) together with several other contracts, bonds, obligations, and other writs, in favour of sundry other persons; *and seeing* the same was done by me to my enorm hurt and lesion, and without any necessary cause done to me for the making and granting thereof, and that, by the law and practise of this nation, I may now be reponed and restored *in integrum* against the same, *therefore, with ye me*, now being past my said age of 21 years complete, and within the *quadriennium utile*, to have revoked, *likeas* I, by these presents, *revoke*, the whole contracts, bonds and other writs, specially and generally above mentioned, subscribed by me in my minority, as said is, either without, or with the consent of my curators for the time, with all that

that has followed, or may follow thereupon,
 and protest that I may be reponed and re-
 stored *in integrum* against the making and
 subscribing thereof, and that it may be lei-
 som to me to call for and recover the mo-
 ney paid by me by virtue of the same, and
 for repetition of any damage or interest su-
 stained therethrough, conform to the fore-
 said privilege of the law introduced in fa-
 vour of minors.' Registration.

Revocation by a Widow.

BE it known, &c. me *A.* relict of the
 deceast *B.* considering that, not only
 by the civil law, but also by the law and
 practise of this nation, all deeds done by
 married women, at the earnest desire of
 their husbands *stante matrimonio* to their
 own enorm hurt and lesion, and without
 any necessary cause, not being ratified by
 the foresaid wives judicially, may be revo-
 ked by them after the death of their hus-
 bands, as being done through the fear and
 reverence they had to their husbands, and
 for entertaining of love and amity betwixt
 them, and consequently may be reduced and
 annulled after the revocation thereof. And
 considering that there was a bond made, &c.
 (Here narrate the writ to be revoked) and
 that there were sundry other deeds done by

K k

' me

‘ me with consent of my said deceast husband,
 ‘ and for entertaining of love betwixt us, and
 ‘ without any necessary cause, and to my e-
 ‘ norm hurt and lesion, which were never
 ‘ ratified by me judicially; *therefore*, and to
 ‘ the effect I may be restored against the fore-
 ‘ said deeds, and that I may obtain the same,
 ‘ with all that has followed, or may follow
 ‘ thereupon, reduced and annulled totally, at
 ‘ least in so far as the same was done to my
 ‘ prejudice, *wit ye me* to have revoked, *likeas*
 ‘ I, by these presents, revoke the facts and
 ‘ deeds, particularly and generally above men-
 ‘ tioned, done by me, with consent of my said
 ‘ deceast husband, or by us both with one con-
 ‘ sent, in favour of the said deceast C. or of
 ‘ whatsoever person or persons; *and I protest*
 ‘ that I may be restored and reponed in *inte-*
 ‘ *grum* against the same, conform to the com-
 ‘ mon laws and practise of this nation.’ Re-
 gistration.

*Of Contracts, or mutual Obligations and
 Conveyances, bipartite, tripartite, &c.*

ALL writtten obligations and conveyan-
 ces are founded on exprefs agreements
 entered into by two or more persons in law
 capable; and they are either single, or double
 and

and mutual. By single obligations and conveyances is meant, where there is only one party binding himself, or conveying a right to the other, who, on the other hand, has instantly performed his part of the agreement, and, on that account, has got an acquittance. As, for example, in a bond of borrowed money, the borrower acknowledges the receipt of the money, and discharges the lender thereof; and, in an assignation, the cedent, for causes either presently or formerly fulfilled to him, assigns and dispones to the assignee, &c. as is clear from the cases already set down and treated of. By double and mutual obligations and conveyances, we understand a writing, wherein the obligations of both parties, and their mutual conveyances, are expressed and set down, which is occasioned, because the mutual prestation of parties is drawn into a future tract of time, so that neither of the parties can or do instantly fulfil their part of the bargain; and, by reason of the condition of the agreement, that the one is not to fulfil his obligation till the other implement his part, there must be a writing formed expressing this bargain, that parties be not disappointed, as will appear from the cases and examples that follow; and these in our law are called *contracts*, of which there are two or more copies signed and delivered, one to each party. The words commonly made use of in contracts are

these; ' It is contracted, agreed, and finally
 ' ended betwixt the parties following, to wit,
 ' *A.* on the one part, and *B.* on the other
 ' part.' Or thus; '*A.* and *B.*, on the one and
 ' other parts, in manner following; that is
 ' to say, the said *A.* hath sold, &c. for which
 ' cause, and on the other part, the said *B.* hath
 ' bound and obliged, &c. to pay, &c.' Or
 between two and one, or between two and
 two, thus; '*A.* and *B.* for themselves, con-
 jointly and severally, on the one part, and *C.*
 ' and *D.*, &c. on the other part, &c.' Or
 between three and three, '*A.*, *B.* and *C.* on
 ' the one part, and *D.*, *E.* and *F.* on the other
 ' part. These are called *bipartite contracts*,
 for how many persons soever there be on a
 side, yet there are but two parties contract-
 ing.

There may be also tripartite or quadripar-
 tite contracts, which have three or four par-
 ties contracting together; and, in general,
 there may be as many parts as the subject of
 the contract and design of the parties make
 needful or convenient, which, by sundry ex-
 amples in this present treatise, will appear.

The contracts we purpose at present to
 treat of, are indentures, contracts concerning
 moveables, contracts of marriage, tacks, and
 submissions.

The word *Indentures* signifies a writing,
 whereof there are two copies indented, or
 cut one of them into another, containing
 heads

heads of a contract or agreement betwixt two or more; and generally, of old, contracts, what nature soever they were of, were indented on the top, answerable to another part in writing, which had the same contents: But, at present, the word *Indenture* signifies only a contract betwixt a master and one that is to be bound an apprentice to him, because, at this time, no other writs but these are in use to be indented. See page 313, & *seqq.*

The form of indentures, properly so called, is various, according to the nature of the calling which the apprentice is to learn; so that an indenture betwixt a merchant and his apprentice, which is written by the clerk of the dean of guild court, differs from the indentures betwixt the masters of the several crafts and incorporations, and their apprentices; as of surgeons, wrights, masons, smiths, &c. which again differ among themselves; and these indentures are commonly written by the clerk of the incorporation. Here I shall only give an indenture betwixt a writer to the signet and his apprentice, which will give an idea of other indentures.

“ **A**T *Edinburgh*, the 1st of *June* 1764;
 “ it is appointed, agreed, and finally ended,
 “ betwixt *A.* writer to his majesty’s signet,
 “ on the one part, and *B.* with advice and
 “ consent of *C.* as cautioner for his said son,

' and taking burden upon him for the said B.
 ' on the other part, in manner following;
 ' that is to say, the said B. with consent of
 ' his said cautioner, becomes apprentice and
 ' servant to the said A. in his vocation of
 ' writing to the signet, for the space of three
 ' years next after his entry, which is hereby
 ' declared to begin at the date hereof. *Like-*
 ' *as* the said B. with consent aforesaid, binds
 ' and obliges him, during that space, leilly
 ' and truly to attend his master's service
 ' at all times, both by night and by day,
 ' and not to absent himself from the same,
 ' during the space of his apprenticeship,
 ' without his master's leave asked and gi-
 ' ven, under the pain of 40 *l. Scots*, to be
 ' paid by the cautioner to the said A. in case
 ' of failzie: and that he shall not willing-
 ' ly hear nor see his master's skaith, in his
 ' name or goods, but shall hinder and impede
 ' the same to his power, and timeously ac-
 ' quaint his master therewith; and that he
 ' shall not, under the said penalty, reveal or
 ' divulge any writs or affairs wherewith he
 ' shall be intrusted by his said master. And
 ' also the said A. binds and obliges him to in-
 ' struct the said B. in the foresaid vocation of
 ' writing, during the space above rehearsed,
 ' and to conceal no part thereof, so far as his
 ' capacity is able to receive. *For the which*
 ' *cause*, the said C. has presently made pay-
 ' ment

'ment to the said *A.* of the sum of (a) 300
 'marks *Scots* money, in name of appren-
 'tice-fee with the said *B.* whereof the said
 ' *A.* grants the receipt, and exoner and dis-
 'charges them, their heirs and executors of
 'the same. And if it shall happen the said
 ' *B.* to defile his body with whoredom, du-
 'ring the time of his apprenticeship, in that
 'case, and immediately thereafter, it shall
 'be leifom for the said *A.* to put him from
 'his company and service. *And likewise*
 'the said *B.* and his said cautioner, bind and
 'oblige them, conjunctly and severally, their
 'heirs and executors, to refund to the said
 ' *A.* his heirs and assigns, all damage, ex-
 'pence and interest, he shall happen to incur
 'through the default of the said *B.* or through
 'his not dutiful attending his master's ser-
 'vice, or through any omission or wrong
 'that shall be committed or done by him.
 ' *And farther,* the said *B.* binds and obliges
 'him, and his forefaids, to warrant, &c. the
 'said *C.* his cautioner, above named, of his
 'said cautionry, and of all costs, &c.' *Re-*
gistration.

Contract

(a) The prentice-fee is now 50 *l. Sterling.*

Contract of Communication of Goods, moveable and heritable, betwixt the Heir and Executor.

“ **A**T — the — day of — years,
 “ it is agreed betwixt *A.* on the one
 “ part, and *B.* his sister on the other part, as
 “ follows; to wit, *Forasmuch*, albeit the said
 “ *A.* be nearest and lawful heir to the deceast
 “ *C.* their brother-german, yet, in regard he
 “ is willing to divide and communicate with
 “ the said *B.* his sister, any benefit that he can
 “ have by the foresaid heirship, and the exe-
 “ cutry and whole moveables are likewise
 “ to be equally divided betwixt them; *there-*
 “ *fore*, the said *A.* now, as if he were already
 “ served and retoured heir to the said *C.* his
 “ brother, and then as now, by these pre-
 “ sents, assigns and dispones to the said *B.* his
 “ sister, her heirs, executors or assignies, the
 “ just and equal half of all heritable debts
 “ and heirship that belonged to the said *C.* the
 “ time of his decease, dispensing with the
 “ generality, and admitting the same to be as
 “ valid as if every particular of the said half
 “ were specially mentioned and expresse; re-
 “ serving always the other equal half of the
 “ said heritable debts and heirship to him-
 “ self. *And, on the other part*, the said *B.* as-
 “ signs.

signs and disposes to the said *A.* his heirs,
 executors or assignies, all right whatso-
 ever that she, as executor, or nearest in kin
 to the said *C.* can have to the equal half
 of the moveable debts and sums of mo-
 ney that were due and pertained to him
 at the time of his death, and that as well
 of those that are particularly mentioned
 in his confirmed testament, as of what
 may be omitted forth thereof; dispensing
 likewise with the generality, &c. (*as above*)
 reserving to the said *B.* herself, the other
 just and equal half of the said executry
 and moveables. And both parties do oblige
 themselves, their heirs, successors and ex-
 ecutors, to grant, subscribe and deliver to
 others, such particular rights and assignati-
 ons as shall be requisite for extending this
 agreement whensoever they shall be desir-
 ed, with warrandice from their own respec-
 tive facts and deeds. And likeways they
 oblige themselves, and their foresaids, *hinc*
inde to others, to bear equal burden, and to
 relieve one another of any prejudice may
 be sustained by the representing the said *C.*
 as heir or as executor, each of them for
 their own equal halves thereof.

A contract and agreement betwixt the
 heir, executor and relict of a person decea-
 sed, concerning the partition and settlement
 of his fortune, which consisted of moveable
 sums lent out upon bond for annualrent,
 was

was thus. At ——— it is agreed betwixt
 A. heir, and one of the two executors to
 the deceast W. his brother-german, and
 B. sister-german, and the other executor
 confirmed to the said W. on the one part,
 and C. relict of the said W. on the other
 part, as follows, to wit, that the bonds
 after mentioned, which belonged to the
 said W. shall all of them be presently de-
 livered to the register by the said C. viz.
 (*Here the bonds were briefly enumerated*)
 and that there shall be two extracts thereof
 taken out of the register, and one of the
 said extracts of each bond shall be deliver-
 ed to the said A. and B. and another extract
 thereof to the said C. As also the said C.
 binds and obliges her to deliver to them a
 bond dated, &c. (*Here several writs which
 were to be delivered were set down*) And it
 is agreed betwixt the said parties, that the
 expence of the registration and extracts of
 the foresaid bonds, shall be paid out of the
 first and readiest of the annualrents of the
 principal sums above mentioned, that were
 resting to the deceased W. at the term of
 Lammas immediately preceeding his death.
 And, in like manner, the said A. and B. as
 principals, ——— as cautioners and so-
 verties for and with them, bind and oblige
 themselves, conjunctly and severally, both
 principals and cautioners, their heirs, exe-
 cutors and successors, that they shall not up-

lift

list any of the principal sums above men-
 tioned, that were due to the defunct at
 the time of his death, nor any of the an-
 nualrents thereof that were resting at the
Lammas preceeding the same, without con-
 sent of the said *C.* liferentrix thereof.
 And that they shall immediately re-employ
 the same, when uplifted, likeways with her
 consent, and take the securities thereof to
 her in liferent, and to the said *A.* and *B.*
 their heirs, executors, or assignies, in fee :
 And how oft the same, or any part thereof,
 shall happen to be uplifted, the principals
 and cautioners bind and oblige them, con-
 junctly and severally, and their forefaids,
 immediately to re-employ the same of new,
 with consent, and to the effect before men-
 tioned. And moreover it is agreed betwixt
 the said parties, that the debts which were
 due by the defunct, and his funeral ex-
 pences, and others, contained in a particu-
 lar list thereof, subscribed by them both,
 with the expences debursed in the confir-
 mation of his testament, and the sum of
 — hereby allowed to the said *C.* for her
 mournings, and for the maintenance of
 herself and family, from the time of her
 husband's death, till the term of *Candle-*
mas 1764, shall be paid out of the bygone
 annualrents that were due to the defunct
 preceeding *Lammas* 1763, and the whole
 remainder of the said sums, both princi-
 pals

‘pals and annuallrents, after deduction of
 ‘what is hereby appointed to be paid out of
 ‘them, is to be lent out, and the securities
 ‘thereof to be taken to her in liferent, for
 ‘the implement of her contract of marriage,
 ‘and subsequent provisions granted to her by
 ‘her husband, and to them equally in fee,
 ‘as is before expressed: And if any other
 ‘debts resting to the defunct shall be reco-
 ‘vered, they shall be applied and employed
 ‘accordingly. And, for obviating and pre-
 ‘venting all differences that may fall out be-
 ‘twixt the said parties, it is agreed, that the
 ‘said *C.* is to have the liferent, from and af-
 ‘ter the term of *Lammas* 1763, of all the
 ‘money belonging to her husband at the
 ‘time of his death, and the fee of the whole
 ‘is to fall equally to the said *A.* and *B.* and
 ‘their foresaids, and she is to claim no part
 ‘of the fee thereof, by virtue of any clause
 ‘contained in her contract of marriage, or
 ‘by virtue of any subsequent right made to
 ‘her by her husband: And both parties, and
 ‘the said cautioners for *A.* and *B.* bind and
 ‘oblige them *hinc inde* to others, to observe,
 ‘perform and fulfil the premises each of
 ‘them to others, according as they stand
 ‘bound hereby; and the party failzier to
 ‘pay to the other party, the sum of ———
 ‘*Scots* money of penalty, by and attour per-
 ‘formance of the premises.’ *Registration.*

According to the various occasions of human society, the designs and undertakings of men, which cannot be defined, there may be as many contracts, in which nothing more is required, than, in proper words of stile, distinctly to set down in good order the meaning of the parties. In these forms of writings there are obligations to perform a deed, work a work, or pay a sum, as the hire of the workman, or reward of the undertaker, where the obligatory words of stile are used. And in sales, the words in dispositions, assignments, &c. are made use of; for knowing which forms the student may make collections of writs of that kind, to instruct himself in the art of making profitable bargains, according to the various occurrences of human life: For example's sake, I shall give the draughts of a contract of victual, a contract of sale of a wood, from which one may observe the cautions to be used in making such sort of bargains: And, when a gentleman or student meets with a contract that expresses a well made bargain, where the parties noticed the minutest circumstances that might occur, and obviated all possible inconveniencies, I do recommend to him to post that writing into his book, to serve him on the like occasions, which he may do in the manner I shall give him a precedent for.

A Contract of Victual is in this Form.

“ **A**^T — it is agreed betwixt *A.* on the
 “ one part, and *B.* and *C.* on the other
 “ part, in manner following; *that is to say,*
 “ the said *A.* has sold and disposed, and by
 “ these presents, sells and disposes, and obliges
 “ himself, his heirs and successors, to deliver
 “ to the said *B.* and *C.* equally betwixt them,
 “ their heirs, executors, or assignies, the
 “ number and quantity of 700 bolls of bear,
 “ of the said *A.* his farm-bear of *D. E.* and
 “ *F.* for the crop and year of **G O D** 1764,
 “ being sufficient stuff; which victual the
 “ said *A.* binds and obliges him, to cause his
 “ tenants to carry in their own sacks, upon
 “ their own horses, and upon their own charges,
 “ to the said *B.* and *C.* or any person having
 “ warrant from them, or either of them,
 “ to *Edinburgh, Leith,* or the *Water of Leith,*
 “ or any place of the like distances, and that
 “ betwixt the date hereof, and the — day
 “ of — next to come, without longer delay;
 “ with the sum of — *Scots* money for
 “ every undelivered boll thereof. *And, on the*
 “ *other part,* the said *B.* and *C.* bind and oblige
 “ themselves, each of them for their own just
 “ and equal parts, (*or conjunctly and severally,*
 “ *if it be so agreed*) their heirs, &c. to content
 “ and

' and pay to the said *A.* or to any having
 ' his order, the sum of ten shillings *sterling*
 ' money for each boill of the said farm-bear
 ' that shall be delivered, or offered to be de-
 ' livered, in manner above specified, and that
 ' at the terms and by the proportions follow-
 ' ing, *viz.* Of the one just and equal third
 ' part thereof at the feast of *Pasch* next to
 ' come; and of another just and equal third
 ' part of the same at *Whitsunday* thereafter;
 ' and of the last third part, in compleat pay-
 ' ment of the said bargain, at the feast of
 ' *Lammas* in the instant year 1764, without
 ' longer delay; with the sum of 600 pounds
 ' money foresaid of liquidate expence for
 ' each term's failzie, and with the annual-
 ' rent of the said principal sum, so long as
 ' the same shall happen to remain unpaid af-
 ' ter the respective terms of payment above-
 ' written; without prejudice of suing exe-
 ' cution hereupon, at the said respective terms
 ' of payment, for what shall be then pay-
 ' able, or at any time thereafter, without
 ' requisition.'

*A Contract of Vendition of Timber is in
 this or the like Form.*

' *A.* sells and dispones to and in favour of
 ' *B.* his heirs or assignies, the whole
 ' growing timber, both oaks, ashes, elms

L.1 2

' and

‘ and other timber, growing within the said
 ‘ *A.* his woods and dykes of ——— together
 ‘ with the whole growing timber upon the
 ‘ bounds of the said town, except what was
 ‘ growing within the tenants yards, (*and the*
 ‘ *generality of this clause was to be conform to*
 ‘ *a particular bounding to have been subscribed*
 ‘ *in a paper per se by both parties*) with the
 ‘ bark and bulk thereof, lying within the parish
 ‘ of ——— and shieriffdom of ——— with power
 ‘ to him to peel, cut, lead and away take the
 ‘ said whole growing timber, bark and bough
 ‘ thereof, within the precinct and bounds of
 ‘ the said two woods, sell, use and dispose up-
 ‘ on the same at their pleasure, and with free
 ‘ ish and entry for felling, cutting and away
 ‘ taking of the same timber and bark, for
 ‘ the space of five years after their entry to
 ‘ the cutting of the same, which is declared
 ‘ to have begun, to the cutting of oak, at the
 ‘ fifteenth day of *April* last, and to have con-
 ‘ tinued in the cutting of oak yearly to the
 ‘ tenth of *August*; and to cut any other tim-
 ‘ ber in the said woods at any time of the
 ‘ year, they always reserving the stock of
 ‘ the wood in so far as they are able; and
 ‘ so forth to continue in cutting the said wood
 ‘ till the said five years should be out-run and
 ‘ bygone. *After B’s part and obligation to*
 ‘ *pay a price, there was added,* ‘ And the said
 ‘ *B.* obliges himself, and his forefaids, to suf-
 ‘ ficiently cause cut and peel the several hags

' of the said woods yearly, as the same shall
 ' be cut, the said *A.* causing always make the
 ' wood-dykes to be bigged upon his own ex-
 ' pences, and also furnishing to him the car-
 ' riages of 80 horses yearly, to *Stirling* or
 ' *Pertb*, for transporting of the bark, each
 ' horse carrying always six firlots of bark,
 ' under the penalty of 20 s. for each defici-
 ' ent horse: As also the said *A.* obliges him,
 ' and his forefaids, not to cut any other timber
 ' in that parish, during the foresaid space, ex-
 ' cepting what is for his own use allenarly.
 ' And, in case of war, famine, or pestilence,
 ' it was specially provided by both parties,
 ' that then, and in that case, the years for
 ' cutting, and the terms of payment corre-
 ' sponding were prolonged and suspended, ac-
 ' cording and conform to the time and years
 ' they should thereby happen to be stopped
 ' and impeded.' In this contract, beside the
 penalty in not termly payment of the price,
 there was a mutual one, of 200 *merks*, to be
 paid by the failzier to the observer.

*A Contract of Co-partnery among the
 Tacksmen of her Majesty's Customs in
 the Year 1705.*

' AT ——— &c. it is appointed, contract-
 ' ed and agreed amongst the parties fol-
 ' lowing, to-wit, *A* and *B*, &c. and in man-

' ner following; *that is to say*, Forasmuch as
 ' the lords commissioners of her majesty's
 ' treasury, by their tack betwixt them on
 ' the one part, and the said haill forenamed
 ' persons on the other part, of the date, &c.
 ' did set, and in tack and assedation let to
 ' all the forenamed persons, their successors
 ' and assignies, (the assignies always being
 ' made during the running of the said tack)
 ' with consent of the lords of treasury, all
 ' and whole her majesty's customs of this
 ' kingdom, as well the custom of the bor-
 ' ders, as others due and payable to her ma-
 ' jesty, for all goods, gear and merchandize,
 ' or other, to be imported to this kingdom,
 ' or forth thereof, to or from any port, har-
 ' bour, creek or isles thereof, either by sea
 ' or by land, of whatsoever quality or na-
 ' ture the same be, with the great impost of
 ' wines, with the custom of brandy-wine,
 ' tobacco and mum-beer, and custom of
 ' lead-ore, (except what belongs to the earl
 ' of *Hopetoun*) together with the custom of
 ' all foreign salt, and others whatsoever, ei-
 ' ther exported or imported betwixt the
 ' towns of *Berwick* and *Carlisle*, in the king-
 ' dom of *England*, *inclusive*, together with
 ' the small and petty impost of 4 *l. Scots*
 ' imposed upon the ton of all wines run,
 ' vented, tapped and sold in small within this
 ' kingdom, as well to burgh as landward, (the
 ' burghs of *Edinburgh* and *Dundee* excepted)
 ' with

with power always to the said haill persons
 to quarrel the rights of the said two burghs
 to the small impost, and to reduce the same
 as accords: Together also with the custom
 and excise of all prohibited and unlawful
 goods, merchandize exciseable to be impor-
 ted to any port or part of this kingdom,
 with the additional duties upon wines and
 other commodities formerly imposed, by
 acts of the privy council, upon the first
 of *March* and 11th of *April* 1681. *As also*
 the additional duties imposed upon goods
 or merchandize by the 34th act of the par-
 liament 1695. And, lastly, the queen's part
 of all seizures of all goods and merchandize
 which should be seized upon, of goods and
 merchandize as well prohibited as not pro-
 hibited, and that during the haill time of the
 said tack, which is the space of three years
 next after the first day of *November* last,
 which was the time of the forenamed per-
 sons their entry, for payment to the said
 lords of treasury, or their receiver, of the
 sum of 28500 *l. sterling* yearly, for the
 tack-duty therein mentioned, as the said
 tack, containing several exceptions, and
 other clauses, in itself more fully bears:
And, seeing all the forenamed persons stand
 equally bound and obliged for payment of
 the foresaid tack duty, and fulfilling of the
 other clauses contained in the foresaid tack,
 and that it is just and reasonable, and also
 agreed

agreed upon amongst the said parties, that
 such methods and rules be set down, as may
 most tend to the advantage of the whole
 society, and prevent any disorders or abuse
 that may happen in the management of
 the foresaid tack; *therefore*, all the said
 partners do unanimously enter into this
 present contract of co-partnership in man-
 ner underwritten. And, in the first place,
 all the fornamed persons, and each of them
 for their own parts, do hereby bind and ob-
 lige them, their heirs and successors, to bear
 equal burden, and to be equal sharers with
 one another in the profit or loss of the
 foresaid tack, and that all acts and deeds, to
 be made and done by the plurality of the
 foresaid society, shall be as binding and ef-
 fectual, as if made and done by all the fore-
 named persons unanimously; *as also*, that e-
 very one of the foresaid partners, whether
 they shall be appointed managers, general
 surveyors, cash-keeper, or albeit they shall
 have no employment in management of the
 foresaid tack, shall have equal salaries, so
 that each partner may have alike benefit by
 the foresaid tack; and if the society shall
 think fit to employ of their own number to
 be collector at any of the ports of the king-
 dom, then, and in that case, there is an es-
 timate to be put upon the salary and casual-
 ties arising from the said port, to the effect
 it be reckoned as a part of the salary that

would

would belong to the person or persons so to be named collector by virtue of the equality foresaid. *And likewise* the said partners, and every one of them, for their own share and interest foresaid, bind and oblige them, and their foresaids, to pay and advance their proportion and share of the said tack-duty, in case the same shall fall short, and that from time to time, during the space of the foresaid tack: And, for the better and more ready fulfilling thereof, it is hereby agreed upon amongst the said partners, that each of them shall advance, and put in the hands of their cash-keeper to be named by them, such a sum of money as shall be appointed by the managers for the time, and that betwixt and the first day of *April* next to come, towards the payment of the tack-duty, and defraying the other charges of the said tack, the said sum always not exceeding the sum of 500 *l. Sterling* money, and premonition being given them by the said managers and cash-keeper, to each partner 30 days before, and so forth from time to time, as the said managers shall appoint, and as the necessity of advance of money shall require: And, in case the said partners shall fail to advance, as said is, then each partner so failing, does hereby subject himself to such penalties as the major part of the said society shall think fit, either by losing the benefit of the said tack, or paying a certain

" certain sum of money in name of penalty
 " or both, as shall be determined by the major-
 " rity, as said is. *And in like manner*, the said
 " partners do hereby declare, that the naming
 " and appointing of managers, general sur-
 " veyors, and cash-keeper, to be inserted and
 " filled up in their federunt-book, or whate-
 " ver other acts shall be made and filled up
 " therein, shall be of as great force, and as
 " binding upon the said whole partners, as if
 " the same were inserted and filled up in this
 " present contract of co-partnery. Which
 " premisses, together with all acts to be made
 " by the plurality of the foresaid society, the
 " whole forenamed persons, each of them for
 " their own parts, bind and oblige them, and
 " their foresaids, to fulfil, stand by and abide
 " thereat, each of them to one another, under
 " the penalty of 100 l. Sterling. Registration.

Of Contracts of Marriage.

Marriage is a conjunction of man and woman, with purpose to live inseparably together till death.

From this conjugal society arises the communion of moveable goods betwixt man and wife, the administration whereof belongs to the husband, which reaches even to alienation; for doing whereof he needs not a formal written assignation, for, by law, marriage

ge is interpreted to be a legal disposition by
 the wife to the husband of all her moveable
 estate, in which, nevertheless, sums of mo-
 ney bearing annual rent are not comprehend-
 ed. On the other hand, the wife's right to
 her husband's moveable estate is, during their
 mutual lifetime dormant; but, in the case
 of her survivance, the law gives her the
 half of her husband's moveables free, after
 payment of debt, in case there are no chil-
 dren, and in case there be any, she gets only
 a third. I speak not here of the right which
 the husband has by law in the heritable e-
 state of his wife, neither of the interest the
 wife obtains in her husband's real fortunes,
 in case of her survivance, because we shall
 have occasion to discourse thereof more pro-
 perly when we treat of real rights. In gene-
 ral, our student may observe, that the legis-
 lators in the most civilized places of the
 world have regulated this conjugal society,
 in what concerns the several rights and estate
 of the married couple, and have provided,
 that the fortune belonging to the woman
 should contribute towards the charges of a
 married state; and also, that after the hus-
 band's decease, the woman be not left desti-
 tute, but be made partaker of a share of the
 husband's means, in such measure as is ne-
 cessary to make her live comfortably. And
 this legal provision only takes place when
 there is no contract or agreement betwixt
 the

the parties, by which the determination of law may be altered; for in this case, as in sundry others, *provisio hominis tollit provisionem legis*.

This contract expresses the conditions of the marriage, for now-a-days, interest has a greater hand in making marriages, than love founded on a virtuous friendship contracted by a long acquaintance; and most part of men first satisfy themselves about the estate and fortune of the party before they begin to love their person. These provisions or conditions are various, according to the quality, circumstances and intention of the parties, which are indefinite; only it is to be observed, that such children, as marry with the consent of their parents or kinsfolks, are, for the most part, well provided for, and out of danger of being imposed on. In regular and solemn marriages, which is the most honourable way of marrying, sometime the contract is signed before solemnization; and it is adviseable, in order to avoid many inconveniencies which may happen, that this were done before the banns be proclaimed in the church.

All contracts of marriage are of this or the like stile in the beginning; ‘ At *Edinburgh*,
‘ the first day of *August* 1764, it is appointed,
‘ ed, contracted, and matrimonially agreed,
‘ between the parties following, to wit, A.
‘ (*the man*) on the one part, and B. (*the wo-*
‘ (*man*)

'man) on the other part, in manner follow-
 ing; that is to say, the said *A.* and *B.* have
 accepted and taken, and, by these presents,
 accept and take each other for their lawful
 spouses, and bind and oblige themselves to
 solemnize and complete the holy bond of
 marriage together with all requisite sole-
 mnities: In contemplation of the which mar-
 riage, and for the tocher after mention-
 ed.' Here are placed the obligations on
 the part of the man, who, if he be not a
 landed man, is obliged to provide a sum of
 money of his own means, and to employ it on
 land or good security, and to take the rights
 to himself and spouse in life, and to the
 children of the marriage in fee. In this place
 the provisions in favour of the children are
 inserted. After the obligations on the man's
 part, follow those on the woman's, who, if
 she have neither father, or mother, or bro-
 ther, who tochers her, she is the principal
 obliger herself, and her part is ordinarily an
 assignation to her tocher, or any claim of
 money, in this stile; 'And, on the other part,
 the said *B.* by these presents, assigns, &c.'
 The last clause in all contracts, according to
 the present stile, expresses the names of the
 friends at whose instance execution is to pass,
 either against the husband for implement of
 the provisions in favour of the wife and chil-
 dren, or against the woman for fulfilling her
 part; and this because, by our law, while the
 M m 'standing

standing of the marriage, regularly there can be no action at the man's instance against the wife, & *vice versa*. Here I only treat of contracts of marriage betwixt those who are not landed persons; of which take the following examples.

‘ **A**T ———, &c. in contemplation of
 ‘ the which marriage, the said *A.* binds
 ‘ and obliges him, his heirs, successors and
 ‘ executors whatsoever, to provide and secure
 ‘ the said *B.* his promised spouse, in liferent,
 ‘ during all the days of her lifetime, in all
 ‘ and whole an annualrent or yearly duty of
 ‘ 900 merks *Scots* money yearly, free of all
 ‘ burdens whatsoever, and that by employing
 ‘ money upon well holden land, or in the
 ‘ hands of sufficient responsal persons, and
 ‘ taking the securities thereof to her in life-
 ‘ rent, at the sight and by the advice of *C.*
 ‘ And, if the same shall be employed upon
 ‘ land, to procure sufficient confirmations by
 ‘ the superior, upon his own expences, for
 ‘ her security thereanent; and, if the money
 ‘ employed to that purpose shall happen to be
 ‘ uplifted, as oft to re-employ the same, by
 ‘ the advice and to the effect above men-
 ‘ tioned. And, for farther security, the said
 ‘ *A.* binds and obliges him, and his forefairs,
 ‘ to make due and thankful payment to the
 ‘ said *B.* of the foresaid annualrent or yearly
 ‘ duty of 900 merks, free of all burden, as
 ‘ said

said is, at two terms in the year, *Whitsun-*
day and *Martinmas* in winter, by equal por-
 tions, beginning the first term's payment
 thereof, at the first *Whitsunday* or *Martin-*
mas next and immediately following the
 said *A.* his decease, for the half year pre-
 ceeding that term, and so forth termly there-
 after, during her lifetime, with 40 *l.* money
 foresaid of liquidate penalty for each term's
 failzie *toties quoties*. And also it is agreed
 betwixt the said parties, that if it shall hap-
 pen the said *B.* to survive the said *A.* in that
 case he hereby disposes to her his whole
 household plenishing and moveables within
 his house, as well what now belongs to him,
 as what shall hereafter be either acquired
 by himself, or what shall come by her, to be
 intromitted with, used and disposed upon by
 her at her pleasure, free of all debt and bur-
 den, excepting only his books, and some
 silver plate, which shall be at his disposing
 notwithstanding of this disposition, whereof
 a particular note is to be made and subscrib-
 ed by both parties. And likewise the said
A. binds and obliges him, and his above spe-
 cified, to make payment to the children,
 one or more, to be procreated of this mar-
 riage, of the sum of 10,000 *l. Scots* mouey,
 to be divided if there be more than one, as
 the father and mother shall agree, and, fail-
 ing of any such division, to be divided equal-
 ly, allowing to the eldest, if a son, 2000
 M m 2. ' merks

‘ merks more than to any of the rest ; and, if
 ‘ there be only daughters, allowing as much
 ‘ to the eldest daughter ; and those proporti-
 ‘ ons to be payable to the said children at their
 ‘ respective ages of 16 years complete. And,
 ‘ in the mean time, he binds and obliges
 ‘ him, and his forefaids, to aliment, educate,
 ‘ and sustain the said children, according to
 ‘ their quality, in all necessaries for mainte-
 ‘ nance, abuliments and education, till their
 ‘ portion be payable. And, in like manner,
 ‘ the said *A.* binds and obliges him, and his
 ‘ forefaids, to provide the just and equal half
 ‘ of all and whatsoever lands, tenements,
 ‘ annualrents, wadsets, adjudications, appri-
 ‘ sings, and sums of money, both heritable
 ‘ and moveable, that shall be conquest or
 ‘ acquired by him, or which shall fall to
 ‘ him during the lifetime of his said promi-
 ‘ sed spouse, to himself and her, the longest
 ‘ liver of them two in liferent, and the said
 ‘ whole conquest to the children to be pro-
 ‘ created betwixt them in fee ; and also to
 ‘ provide all sums of money, and others, that
 ‘ shall fall to his wife during the time of their
 ‘ marriage, to him and her, the longest liver
 ‘ of them two, in liferent, and to the chil-
 ‘ dren to be procreated betwixt them ; which
 ‘ failing, to his nearest heirs whatsoever, ex-
 ‘ cept only her own cabinet, with such pearls,
 ‘ diamonds and jewels as now belong to her,
 ‘ which she has power hereby reserved to dis-
 ‘ pose

'pose of in favour of any person she pleases,
 'without his consent, in case there shall be
 'no children. And he obliges himself, and
 'his forefaids, to ratify, and, if need be, to
 'renew any right that shall be granted by her
 'thereanent. Which provisions above men-
 'tioned, in favour of the said *B.* she, by these
 'presents, accepts in full satisfaction of all
 'terce and third of lands or third or half
 'of moveables that may fall to her by her
 'husband's death, or which her nearest in
 'kin can claim by her own death, in case he
 'survive her. *And, on the other part,* the
 'said *B.* by these presents, assigns and disposes
 'to the said *A.* his heirs or assignies, (*seclud-*
 '*ing his executors*) the sum of 5000 merks
 '*Scots* money of principal, with 500 *l.* of li-
 'quidate expences, and the annualrent of the
 'said principal sum, during the not-payment,
 'after *Lammas* in this instant year, contain-
 'ed in a bond granted to her by ——— and
 '——— conjunctly and severally, of the date
 '——— with the bond itself, and all that
 'has followed, or may follow hereupon, *sur-*
 '*rogating* and *substituting* the said *A.* in her full
 'right and place of the same for ever. Which
 'assignation she binds and obliges her, her heirs
 'and executors, to warrant from all facts and
 'deeds done, and to be done, by her, or her
 'forefaids, prejudicial hereto alienarly. *Likeas*
 'she hath instantly delivered to him the bond
 'unregistred, to be kept and used by him, and

his forefaids, as their own proper evident, at
 their pleasure in time coming. *As likeways*
 ſhe assigns to him, and his forefaids, the plea
 and proceſs depending, at her and the reſt of
 her ſiſters and brothers inſtance againſt —
 merchant in *Rotterdam*, for the number of
 8000 rix dollars, and that in ſo far as con-
 cerns her part and proportion thereof; and
 all acts, decreets, and interlocutors paſſed,
 or to be pronounced and paſſed in her fa-
 vour, and all benefit that may redound to
 her thereby, he always bearing a proporti-
 onal part of the expences deburſed, or that
 ſhall be deburſed in that proceſs. *And fur-*
ther, ſhe assigns to him, and his forefaids,
 her part and proportion of all other means
 and monies to which ſhe has right from her
 ſaid deceaſt father, or umquihile — her
 mother; and to all bonds and ſecurities grant-
 ed to her by her deceaſt father and mother,
 conform to the law of *Holland*, in manner
 mentioned in her mother's teſtament, and
 other writs granted by her father to her for
 that effect, and for payment whereof ſhe
 may affect any lands or eſtate belonging to
 her ſaid father; and all writs and rights
 made and conceived, or which may be in-
 terpreted in her favour thereanent, diſpen-
 ſing with the generality, and which ſhe ob-
 liges her, and her forefaids, to warrant in
 manner above written. Nevertheless, that
 what ſhall be recovered of her proportion of

'the debt due by the said ——— and of any
 'other means to which she has right from
 'her father or mother, or wherewith she
 'may affect her father's estate, shall be se-
 'cured by the said *A.* to the said *B.* in life-
 'rent, during all the days of her lifetime,
 'and the fee thereof to the children of this
 'marriage; which failing, to the said *A.* his
 'heirs and assignies whatsoever, and that o-
 'ver and above the provisions above specifi-
 'ed. And, lastly, it is agreed that execution
 'shall pass on this contract, at the instance
 'of the said *C.* for implement thereof in fa-
 'vour of the said *B.* and the children of the
 'said marriage.' Registration, &c.

In another way, thus; 'In contemplation
 'of the which marriage, and for the tocher
 'after mentioned, the said *A.* by these pre-
 'sents, binds, &c. to provide and have in
 'readiness of his own proper means, the
 'sum of 40,000 merks *Scots* money, and to
 'add and eik the same to the tocher after
 'mentioned; which, with the bygone an-
 'nualrents thereof hereby assigned, extends
 'to 10,000 merks, making in whole the sum
 'of 50,000 merks money foresaid; and to ware,
 'employ and bestow the same upon land, or
 'in the hands of sufficient responsal persons,
 'at the sight and by the advice of (*the wo-*
 '*man's friends named*) and to take the securi-
 'ties of 40,000 merks thereof to himself and
 'his said promised spouse, and the longest liver
 ' of

“ of them two, for their liferent-use, under
 “ the conditional restriction after mention-
 “ ed; and to the children, to be procreated
 “ betwixt them, after their decease; which
 “ failing, to the said *A.* his own heirs and as-
 “ signies whatsoever. And farther, he bound
 “ and obliged him, and his foresaids, to employ
 “ 10,000 merks more upon land, or in the
 “ hands of sufficient responsal persons, at the
 “ sight and by the advice above written, and
 “ to take the securities thereof to himself,
 “ and, failing of him by decease, to the chil-
 “ dren to be procreated of this marriage; which
 “ failing, to his other heirs and assignies what-
 “ soever. Which sum of 50,000 merks is to
 “ be divided among the said children, as the
 “ said *A.* in his own time shall appoint; and,
 “ if he shall make no such division, the same
 “ is to fall equally amongst the children allow-
 “ ing to the eldest, if a son, — thousand merks
 “ more than any of the rest. And, notwith-
 “ standing of the provisions above specified,
 “ it is hereby declared, that, if the said *B.* shall
 “ survive the said *A.* and that there shall be
 “ children of the said marriage, in that case
 “ her liferent provision, above specified, is
 “ to be restricted to 1800 merks Scots mo-
 “ ney yearly, to be paid at two terms in the
 “ year, *Whitsunday* and *Martinmas* in winter,
 “ by equal portions, beginning the first term’s
 “ payment thereof at the first *Whitsunday* or
 “ *Martinmas* next and immediately follow-

ing

ing the decease of the said *A.* and so forth
 termly thereafter, during her life-time, and
 the superplus of the said annualrent of the
 40,000 merks is to be quit by her, and to
 belong to her said children. Declaring, ne-
 vertheless, that, if the children shall hap-
 pen to die before their being married, in
 that case she shall recur, and have right
 to the annualrent of the said whole 40,000
 merks, from and after their decease, du-
 ring her lifetime. Which liferent-provisi-
 on the said *B.* with consent aforesaid of
 her said brother, by these presents, accepts
 in full contentation of all terces, thirds of
 lands, third or half of moveables, or any
 other thing that may fall or belong to her,
 or which she may anyways claim by and
 through the decease of the said *A.* her
 promised husband, in case she shall sur-
 vive him, or which her executors or near-
 est in kin can claim by her own decease,
 in case she shall happen to die before him,
except the equal half of the household-ple-
 nishing that shall belong to him the time
 of his death, without deduction of the
 moveable heirship, to which half she is to
 have right in case she shall outlive him, to
 be intromitted with, used and disposed up-
 on at her pleasure, free of all debts and
 burdens whatsoever.

If the parties be persons of quality, you
 say,

say, ' It is agreed betwixt the honourable
' parties following.'

The consent of father, mother, or other
friends, is thus; ——— ' *A.* second son to *B.*
' with the special advice and consent of his
' said father, and of *C.* his eldest brother, and
' the said *B.* for himself, and them all with
' one consent and assent on the one part,
' and *D.* second lawful daughter to *E.* with
' the special advice and consent of her said
' father, and of *H.* her mother, and of his
' eldest son her brother, and the said *E.* and
' *F.* for themselves, and taking burden upon
' them for the said *D.* and them all with one
' consent and assent, on the other part.'

In some contracts the father takes burden
for his son, which is indispensibly necessary
when the son is a minor:

Some writers set down a day betwixt and
' which the marriage is to be solemnized, thus:
—— ' with all requisite solemnities, betwixt
' and the —— day of ——, without longer
' delay.' I have seen also a penalty in case of
failzie, but that is unnecessary.

In case the money lent out, upon security
taken to the man and wife in liferent, shall
happen afterward to be uplifted, the contract
should contain this obligation; ——— ' And
' how oft the said sum, or any part thereof
' shall be uplifted by the said —— he binds
' and obliges him and his foresaids, as oft of
' new to ware, bestow and re-employ the same.

at the sight and by the advice of the said
 ——— in favour and to the effect above
 mentioned.’

In some contracts of marriage the clause
 concerning the conquest is thus; — ‘ *Like-*
as the said ——— hereby binds and obliges
 him, and his forefairs, that whatever lands,
 tenements, houses, annualrents, sums of mo-
 ney, merchant-ware, or any other goods
 or gear whatsoever, that he shall happen to
 conquest, acquire, or succeed to during the
 said marriage, any manner of way, that he
 shall provide the same, and take the rights
 and securities thereof to himself and to the
 said ——— his future spouse in liferent, and
 the heirs or bairns to be procreated by them
 of the said marriage, in fee; which failing,
 to return to the said future spouses, their
 heirs, executors or assignies above menti-
 oned, by equal division, as aforesaid.

When conquest is provided to bairns of
 a marriage, it is fit to consider of succession,
 and to determine, if an estate, which the hus-
 band may succeed to, shall be provided to the
 bairns male or female. In the contract of
 marriage betwixt ——— and ——— it was pro-
 vided, ‘ I hat the conquest shall pertain to the
 females of the marriage, but the estate of
 the father, to which the husband, being
 then a second son, might in process of time
 succeed, was expressly excepted.

A

A wife, in her part of the contract of marriage, having, among other sums, assigned to her future husband certain law-suits, which were briefly narrated; and, because she was provided to the liferent of what should fall to her during the marriage, over and above her other provisions, it was declared, ‘ That
 ‘ what shall be recovered of her proportion
 ‘ of the debts due by ——— or of any o-
 ‘ ther means to which she has right from
 ‘ her father, mother, or wherewith she may
 ‘ affect her father’s estate, be secured by
 ‘ the said *A. (the husband)* to the said *B. (the*
 ‘ *wife)* in liferent, during all the days of
 ‘ her lifetime, and the fee thereof to the
 ‘ children of this marriage; which failing
 ‘ to the said *A. his heirs and assignies what-*
 ‘ *soever,* and that over and above the provi-
 ‘ sions above specified.’

If there be many bonds and sums belonging to the woman, in her part of the contract, they are particularly set down and assigned in common form; the assignation is a full stile.

In a contract, where the woman contracted with consent of her elder brother, who being in law obliged to tocher her, at least to fulfil his father’s provisions, this was ad-
 ‘ jected to the behoof of the brother.——

‘ And which sums above assigned, the said
 ‘ *B. (the woman)* with consent of the said *A.*
 ‘ *(her future husband)* by these presents, ac-

‘ cepte

cepts in full satisfaction of all that might fall to her, by the decease of her said father, any manner of way.

On the other hand, I have seen it provided, — ‘ *And farther*, it is agreed, that the said *B.* and, failing of her by decease, the bairns to be begotten in the said marriage, shall be a bairn in the said *F.* her father’s house, and be a portioner of his goods, gear and debts the time of his decease, (the rest of the bairns being *forisfamiliate*, or provided to the like portion.) Or thus, — It is always expressly provided and declared, that the said — shall be a bairn of her father’s house, and shall be in *pari passu* with the other children, and be an equal sharer with them, the said other children being always first provided, each of them to the like portion, and reserving the heirship, and what shall fall due to the heir of the said —.’

By the custom of this kingdom, if within year and day the marriage dissolve, there not being a living child of the marriage born, all things return to their former condition, as if there had no marriage or contract been. But this inconveniency may be provided against, *quia pactum hominis tollit provisionem legis*. And it being uncivil to suppose such a thing, so as in the body of the contract to provide against it, a bond or a writ a-

part, to this effect, is more proper. Which bond may be in this or the like stile.

BE it known, &c. me *A. Forasmuchas*, by contract of marriage of this date, betwixt me on the one part, and *B.* on the other part, I have provided her in manner therein exprest; yet nevertheless, in regard that, by the law and custom of *Scotland*, if the marriage should dissolve by my death within year and day, and that there be no children betwixt us, she should only have right to her own tocher: *And therefore*, in contemplation of the foresaid marriage, I do hereby oblige myself, my heirs and executors, that in case our marriage shall dissolve within year and day, and that she shall outlive me, and that there be no children then procreated betwixt us, in that case not only to repone her to the right of her own tocher, with warrandice from my own proper fact and deed, and to make up any part thereof that shall be uplifted by me, but likewise to make payment to her, her heirs or assignies, of the sum of 12,000 merks *Scots* money more, and that at the first *Whitsunday* or *Martinmas* next and immediately following my decease, if the same shall happen within year and day without children, as said is, with annualrent of the said sum so long as the same remains unpaid after the term of payment foresaid,

and

and 1000 merks money foresaid of liqui-
 date expences, in case of failzie, over and
 above performance of the premisses: And
 this beside any other thing of gold, mo-
 ney, or jewels, gifted, or that shall be gif-
 ted by me to her. And I declare this pre-
 sent obligation shall be as sufficient as if it
 were ingrossed in the contract of marriage.

Registration. (a)

To supply the want of a contract in run-
 away or hasty marriages, the married couple
 may cause write one of the same tenor with
 an antenuptial contract, which by law, in so
 far as the provisions are rational, will bind
 parties to the observance of the condi-
 tions. This postnuptial agreement differs in
 nothing almost from the other, save in the
 narrative, as will appear from the following
 example.

N n 2

IT

(a) By the present practice, a short clause, dispen-
 sing with the law and custom in this respect, is usual-
 ly ingrossed in the contract, thus; ' Providing always,
 ' *likens* it is hereby specially provided and agreed to
 ' by both the said parties, that, in case the marriage
 ' shall dissolve, by the death of either party, within
 ' year and day, without any child procreated or exist-
 ' ing of the marriage; yet, nevertheless, this present
 ' contract, with the hail conditions, provisions and
 ' clauses thereof, conceived in favour of either party,
 ' shall stand, subsist, and be of full force, strength and
 ' effect; any law, statute or practice to the contrary
 ' notwithstanding.'

‘ **I**T is agreed betwixt *A.* on the one part,
 ‘ and *B.* now his spouse, with advice and
 ‘ consent of *C.* her brother, and the said *C.*
 ‘ for himself, on the other part; that is to
 ‘ say, *Forasmuch as*, albeit the said *A.* and *B.*
 ‘ are already married, yet there having been
 ‘ no contract hitherto betwixt them, the said
 ‘ *B.* is not sufficiently secured in any join-
 ‘ ture, nor are children of the marriage pro-
 ‘ vided, or a tocher given to the said *A.* ac-
 ‘ cording as was communed and agreed upon
 ‘ betwixt the said parties before and at the
 ‘ marriage: In contemplation whereof, and
 ‘ of the tocher after mentioned, the said *A.*
 ‘ obliges him, &c. *as in an antenuptial con-*
 ‘ *tract.* For which causes the said *C.* obliges
 ‘ himself, to make payment to the said *A.* in
 ‘ name of tocher, &c.’ In common form,
 as above.

Of Tacks and Affedations.

‘ **A** Tack is a contract of location, whereby
 ‘ the proprietor sets to another person lands
 ‘ or tenements, in town or landward, during a
 ‘ certain space of time, for a certain hire or duty.

Our law requires necessarily, in a formal
 tack, 1. That it contain the denomination
 of the tenement set. 2. That it express
 entry and ish, that is, when it should begin
 and

and end. And also, 3. The special tack-duty, and time of payment thereof.

Any thing may be the subject of a tack or location, which, in the use thereof, may be profitable to our neighbour, *salva rei substantia*, as mens labour, moveables, both dead and living, lands, tenements: But when men are hired for daily labour, or horses hired for a journey, and the like, one seldom puts the agreement into writing; though bargains for framing a work of considerable value, as building of a ship, or a house, or the like, are in use to be comprised in a contract, where the conditions of the agreement are set down and expressed, whereby they are best kept in memory and observance, an error, mistake, or forgetfulness of the least of these articles being of no small consequence to either party. To give an *idea* of this sort of contract, I shall set down one that was made for building a bridge over a river.

The obligations on the mason's part were,
 ' To build a bridge upon — consisting of two
 ' bows, each bow twenty four foot of wide-
 ' ness, the cuinzies of the pend of free stone,
 ' with a mid pit of free stone with a pean or
 ' beak upon the current of the water, and to
 ' make sufficient landstales for men and horse
 ' to go and ride upon the same; and to build
 ' upon each side of the bridge, next to the cur-
 ' rent of the water, fifteen foot of wall next
 ' the brae, and to make it four foot of height

N. n. 3

' from

' from the foundation of dry stone, and to lay
 ' some great stones about the middle pillar, for
 ' defending it from the ice; and to build the
 ' said bridge ten foot broad, and to causeway it
 ' all over, from one end to the other, and to
 ' build ledges ell-height, and to cope them
 ' with free stone, and to bart them sufficiently
 ' with iron, and to run the same with lead,
 ' and to build a pend betwixt ——— and ———
 ' upon the gotes, so that there may be free
 ' passage to the bridge, and to flag other three
 ' gotes; and to build another bridge over
 ' ——— of two bows, and a blind bow, and
 ' to flag the rest of the gotes, and to cast
 ' chingle upon them, and make the way pas-
 ' sable; and to repair another bridge, and to
 ' help some of the key-stones which are de-
 ' fective, and to put spouts for carrying a-
 ' way the water off the said bridge, and to
 ' take down the beak of the mid pillar of the
 ' said bridge, from the top to the bottom,
 ' and to build it up of new, and to put in a
 ' great iron goad from the bottom of the
 ' water to the top of the beak, with a num-
 ' ber of branches going out, which is to be
 ' batted in with lead in the stones, and to
 ' batt as much more as is thought convenient.
 ' And the gentlemen on the other part, bound
 ' themselves to pay the price agreed upon at
 ' three terms; one was at the beginning of
 ' the work, the other at the middle of the
 ' work,

* work, and the last was at the finishing and
 * outredding the said work.

And the heritors, living in the places where
 these bridges were to be built, gave an oblige-
 ment, in a paper apart, of this tenor; ' Bind-
 * ing themselves, each of them for their own
 * parts and proportions, according to their va-
 * lued rent within these parishes, to furnish
 * horses and men for carrying iron, timber,
 * lime and lead to the works, for building
 * and repairing the said bridges, according to
 * the former contract, and to bring them with-
 * in an ell of the place where they are to be
 * made use of, if it can be conveniently done
 * for the ground about them; with this con-
 * dition, that the whole materials are to be pro-
 * vided and bought up by the masons, either at
 * S. or A. or both, and the heritors were not
 * obliged in carriages from any other places,
 * and these carriages were to be called for at
 * seasonable times, and not in harvest; and
 * the heritors bound themselves to meet and
 * stent every man's proportion of the said car-
 * riages, and the order according to which
 * they should be called for, and to deliver this
 * cast to the masons above named; and the
 * heritor who was to be deficient in his car-
 * riages, so that the masons should thereby ly
 * idle through want of materials, bound them-
 * selves to pay the masons 10 s. each day they
 * lay idle for want of carriages: But, in case
 * war, famine, or pestilence, should fall out
 * in

‘ in the country, (*as GOD forbid*) whereby
 ‘ the heritors would not be able to perform
 ‘ these carriages and services, in that case it
 ‘ was not to be imputed to them as any breach
 ‘ of this agreement, neither were they liable
 ‘ in payment of the penalties.’

The word *tack* with us is only, in a proper
 use of it, applied to signify a location of
 lands or tenements, which is in the follow-
 ing stile. ‘ At ——— it is appointed, agreed,
 ‘ and finally ended, betwixt *A.* heritable pro-
 ‘ prietor of the lands and others underwrit-
 ‘ ten, on the one part, and *B.* on the other
 ‘ part, in manner following; that is to say,
 ‘ the said *A.* has set, and in tack and asseda-
 ‘ tion letten, and by these presents, sets, and
 ‘ in tack and assedation, for the yearly mail
 ‘ and duty underwritten, lets to the said *B.*
 ‘ his heirs, executors or assignies, being of
 ‘ no higher degree than himself, all and whole
 ‘ the lands of ——— with houses, biggings,
 ‘ yards, out-field, infield mosses, muirs, mea-
 ‘ dows, common pasturage, parts, pendicles,
 ‘ and pertinents thereof, as the same were
 ‘ last possessed by ——— all lying within
 ‘ the sheriffdom of ——— together with
 ‘ the teind-sheaves, and other teinds, par-
 ‘ sonage and vicarage, of the lands and others
 ‘ foresaid, and that for all the days, space,
 ‘ years and terms of 19 years next and im-
 ‘ mediately following the said *D.* his entry
 ‘ thereto, which is hereby delared to have

‘ been

been and begun at *Whitsunday* last bypast, in
 this present year 1764, and from thence-
 forth to endure, and to be peaceably labour-
 ed and manured by the said *B.* and his fore-
 saids, as the same lies in breadth and length,
 with free ish and entry to and from the
 same, and with all and sundry privileges,
 easements, and righteous pertinents what-
 soever, freely, quietly, well and in peace,
 without revocation. Which tack and af-
 sedation the said *A.* binds and obliges him,
 his heirs and successors, to warrant, acquit
 and defend, to be good, valid and sufficient
 to the said *B.* and his forefaids, at all hands,
 and against all deadly. *For the which tack,*
 lands, teinds, and others above rehearsed,
 the said *B.* binds and obliges him, his heirs,
 successors, executors and intromitters with
 his goods and gear whatsoever, to make due
 and thankful payment to the said *A.* or to
 ——— his factor, and chamberlain, or to
 any other person whom he shall appoint for
 that effect, of the sum of ——— *Scots money*
 for the lands of *C.* and of the sum of ———
 money foresaid for *D.* at two terms in the
 year, *Whitsunday* and *Martinmas*, by equal
 portions, beginning the first term's pay-
 ment at *Martinmas* next, and the other at
Whitsunday 1765, for the year preceeding,
 and so forth yearly and termly thereafter,
 during the continuance of this tack. And,
 in like manner, the said *B.* binds and obliges
 him

• him, and his forefaids, at the expiring of
 • this tack, to leave the houfes in a fufficient
 • condition, and, at the expiring thereof, to
 • flit and remove himfelf, his family, co-
 • tars and fervants, goods and gear, forth and
 • from the lands and others above mentioned,
 • and leave the fame void and redd, to the
 • effect that the faid *A.* and his forefaids, may
 • enter thereto without any warning or pro-
 • ceffs in law; and both the faid parties bind
 • and oblige them, and their forefaids, to ob-
 • ferve and perform the premisses to others,
 • and the party failzier to pay to the other par-
 • ty the fum of 500 merks *Scots* money of li-
 • quidate expences, befides performance of
 • the premisses.' Registration.

This tack-duty may be either in money
 alone or victual alone, or may be in money
 and victual jointly, and alfo the tenant bound
 to pay publick burdens, or minifters ftipends,
 with thirlage to a mill, &c. which is thus
 expreffed ——— ' To make payment of 300
 • merks at two terms in the year, *Whitfun-*
 • *day* and *Martinmas*, by equal portions, be-
 • ginning the first term's payment thereof at
 • *Whitfunday* next to come in the year 1764
 • and fo forth yearly and termly thereafter
 • during the continuance of this tack, with fix
 • bolls good and fufficient meal, and fix bolls
 • good and fufficient bear yearly, betwixt *Yule*
 • and *Candlemas*, beginning the first year's pay-
 • ment of the faid victual betwixt *Yule* 1764,

• and

Candlemas 1765, and that for the crop 1764, and so forth yearly thereafter during this tack, together also with the sum of 20 *l. Scots* money of teind to the minister of ——— and to deliver yearly to the said *A.* or his fore-saids, sufficient discharges thereof, together with the multures and services to the mill of ——— used and wont to be paid by the tenants of the said lands, and to pay out and advance the half of all publick burdens imposed, or that shall be imposed upon the said lands, during the time of this tack; (*Or thus*; To relieve him of the equal half of all publick burdens that shall be due and payable forth of and for the lands, teinds and others contained in this tack, during the continuance thereof, and to advance the whole publick burdens as they shall happen to fall due, he getting allowance of the other half thereof, out of the first end of his rent) and to pay the officer's fee, dam-silver, multure-bear, and other casualties incident to the said lands.'

The tenant getting the houses good and sufficient, is bound to leave them in as good a condition; yet this is not always so. For clearing matters of controversy about the houses I have seen this clause in a tack; And, for obviating and preventing all differences that may fall out concerning the present condition of the houses upon the lands contained in this tack, it is agreed betwixt
the

‘ the said parties, that the same shall be fight-
 ‘ ed and prised presently by four honest men
 ‘ two to be chosen by either party, and they
 ‘ are to be again fought in the same manner
 ‘ at the expiring of this tack; and if they
 ‘ shall be found to be worse, the said *B.* and
 ‘ his forefaids are hereby obliged to make
 ‘ them in as good condition, and to leave
 ‘ them so then as they are found to be now;
 ‘ and, if they shall be found to be better then,
 ‘ than at this time, in that case the said *A.*
 ‘ is to pay in to the tenant the superplus
 ‘ more than they are prised to at this present
 ‘ time, not exceeding the sum of 100 *l.*
 ‘ *Scots.*’

I have seen this clause in a tack, after the
 clause for leaving the houses tight——‘ And,
 ‘ in regard the said *B.* gets the whole dung
 ‘ and foulzie upon the ground of the said
 ‘ room, for the labouring of the bear-land,
 ‘ and likeways a hay-stack, of —— fathoms,
 ‘ therefore he binds and obliges him, and his
 ‘ forefaids, to leave as much dung upon the
 ‘ ground thereof, with another stack of hay
 ‘ of the like quantity, at the expiring of this
 ‘ tack, as he now receives.’

Some tacks have a clause for either party
 to be free within a certain number of years,
 and an irritancy against the tenant if he suf-
 fer two terms rent to run into a third un-
 paid, which is placed before the obligation
 to remove, thus; ‘ And likeways it is agreed,
 ‘ That

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And,
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said
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hay
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party
ears,
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ment
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That

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and obliges him to pay yearly to the said A. his heirs, executors or assignies, the sum of 500 merks Scots money, at two terms in the year, &c. beginning the first term's payment, &c. and so forth yearly and termly thereafter, during the space of this present tack, with penalty, &c.'

Of Submissions.

BEfore persons at variance go to law, they are in duty bound to endeavour an accommodation, in order to which they ought first to confer among themselves; and, if that has no effect, through their being wedded to their own opinion, affected to their own interest, and disdaining to yield any thing to their antagonist, it is proper to call for the mediation of one or two honest knowing neighbours, who may cognosce and settle these differences. For terminating which in a more firm manner, so as their sentence may take effect, they cause write a submission, which is a mutual agreement of two or more parties at difference, wherein they refer the ending of their controversy to the arbitrament and determination of one or more arbiters, and oblige themselves to stand to their decision.

A submission is either general, of all clags, claims, questions, demands, &c. or special,

of a certain controversy concerning a particular subject.

As in judgment, so in a submission, there are three parties, two whereof are those who strive and contend together, and the third is the arbiter.

Persons by law forbidden to convey their goods, or to bind their persons, are incapable to enter into a submission.

An arbiter is the person, who, by the parties in their submission, is elected to decide the difference and controversy betwixt them, and he differs from an arbitrator, who brings the agreements and bargains of parties to an happy issue, determines the price of goods bought and sold, and the like. An arbiter then is a sort of extraordinary judge, whose power and jurisdiction is owing only to the mutual consent and election of the parties contending; and because the matter is committed to his pleasure and arbitrement, he is called an arbiter, or arbitrator; or, because it is done by the mutual promise or compromise of the parties, he is termed *compromissarius judex*. His power is larger than that of any judge, ordinary or extraordinary, appointed by a sovereign, for an arbiter may judge according to his own mind, having GOD and good conscience before his eyes, and that as well in matters respecting fact, as those which concern the law, to the forms whereof he is not tied; whereas judges, properly

perly so called, are bound to observe the form, rule and order prescribed by law, whereof they are the executors: For which cause Tully said well, *Aliud est judicium, aliud arbitrium; nam judicium est pecuniæ certæ, arbitrium incertæ; ad judicium hoc modo venimus, ut totam litem aut obtineamus, aut amittamus; at arbitrium hoc modo adimus, ut neque nihil, neque tantum quantum postulamus, consequamur;* which gave rise to the proverb, *He that puts his coat to the dying, is like to lose a quarter.*

Arbiters have a most illimited power by the act of regulation 1695, art. 25. which prohibits the lords of session to sustain reduction of any decreet arbitral, for any cause or reason whatsoever, except corruption, bribery or falsehood be alledged against the arbiters.

Seeing then the power of arbiters is so great and uncontrollable, wariness must be used in the choice of them, in which the parties are to seek for a sufficiency, and an indifferency, that they be skilful in the matter submitted, and free from malice or favour to either party.

Now, in every submission, these three things are to be observed. 1. That it be in writing, and bind the parties, their heirs and executors, to stand by and observe the decreet arbitral. 2. That it give the arbiters sufficient authority to do all things necessary for ending the controversy, as to ap-
point.

point time and place of meeting; examine witnesses, and other mean of probation, and at last to decide in the matter submitted. 3. That it expresse a special time, betwixt and which the decision and sentence is to be pronounced, lest the parties be long lingred with vain hope and expectation, and that the arbiters may, before the set time; pronounce their decret, for what they arbitrate after the time appointed is void; yet a submission *sine die* lasts for year and day after its date.

When the parties sign the submission, they put their names to a blank on the other side, above which subscription the arbiter writes his decret; which, when registred by virtue of the clause of registration in the submission, will be warrant for letters of horning.

The arbiters are to sign the submission in token of their acceptance, after which they could be compelled to pronounce sentence: And some submissions have an obligation upon the arbiters to decide betwixt and a certain day, on which horning and other compulsory diligence could be raised.

Follows the Stile of a Submission.

' A T ——— A. for himself, and taking
' A burden upon him for his partners, on
' the one part, and B. for himself, and taking
O o 3 ' bur-

‘ burden upon him for his partners, on the
 ‘ other part, have submitted, and, by these
 ‘ presents submit themselves to the amicable
 ‘ determination, and final sentence arbitral,
 ‘ to be given and pronounced by C. arbiter
 ‘ chosen for the part of the said A. and to D.
 ‘ arbiter chosen for the part of the said B.
 ‘ concerning what shall be found due by the
 ‘ said A. of his charge in the collection of
 ‘ his majesty’s customs and excise at *Leith*,
 ‘ after just compt and reckoning, for the
 ‘ three years immediately preceeding the first
 ‘ of *November* ——— And concerning what
 ‘ shall be found due, after just compt and
 ‘ reckoning, by the said B. for his whole in-
 ‘ tronissions and charge of the money paid
 ‘ in and compted for to him, from the feve-
 ‘ ral collectors in *Scotland*, for the said three
 ‘ years, as shall at more length be contained
 ‘ in the claims to be given in *hinc inde* by the
 ‘ said parties to the said arbiters, which are
 ‘ holden as repeated and expressed, with power
 ‘ to the said arbiters to examine and take in-
 ‘ formation from the respective partners, or
 ‘ others concerned, and to call for, and con-
 ‘ sider the instructions to be given in by both
 ‘ parties, and to decide and determine there-
 ‘ in as they shall think fit and just; and to
 ‘ give forth their final sentence and decreet
 ‘ arbitral, and insert the same in the subscribed
 ‘ blank upon the back hereof, betwixt and
 ‘ the ——— day of ——— without delay.

‘ *With*

With power likewise to the said arbiters, in case of variance before that day, to chuse an oversman ; *and whatever* the said arbiters or oversman, in case of variance betwixt them, shall declare and determine in the said matters, and insert in the blank upon the back hereof, betwixt and the day foresaid, both the said parties, for themselves, and taking burdén for their respective partners, bind and oblige them, their heirs, executors and successors, to stand, abide thereat, underly, and fulfil the same, without any appellation or reclamation whatsoever, under the pain and penalty of ——— to be paid by the party failzier to the other party, in case of failzie, over and above performance of what shall be determined by the decreet arbitral. And in case the above named arbiters, or, in case of variance, the oversman to be chosen by them, shall not, before the 10th of ——— next, decide and determine in these differences, then, and in that case, this present submission, and all that shall follow thereupon, shall, from and after that day, be null and void, as if it had never been entered into.

In the case of a controversy about lands, the matter of the submission is expressed thus ; ‘ ——— Submits to the sentence arbitral to be pronounced by C. concerning the several pretences to be made by both parties to the property of the lands of D. with
‘ houses,

'houses, biggings and pertinents thereof ly-
 'ing, &c. conform to the claims to be given
 'in by the said parties, to the said arbiters,
 'hinc inde thereanent, which are holden as
 'expressed in this present submission, with
 'power to the said C. to decide and deter-
 'mine which of the said parties rights are
 'best, and most preferable to the property of
 'the foresaid lands; and to determine to
 'whom the property of the same lands shall
 'belong, and what shall be paid by the party
 'who gets the lands, to the other party in sa-
 'tisfaction of his claim, and what writs shall
 'be granted by either of the said parties to
 'others thereanent. Likeas the said C. by
 'these presents, accepts the decision of the
 'foresaid differences in and upon him, and
 'shall pronounce and give forth his final sen-
 'tence and decret arbitral in the said mat-
 'ter, and insert the same in the subscribed
 'blank upon the back hereof, betwixt and the
 '—— without longer delay. And what-
 'ever the said C. declares and determines,
 '&c.'

A short Form of a Submission.

'WE A. and B. by these presents, sub-
 'mit and refer to C. and D. all con-
 'troversies, claims and competition of right
 'between us, of and concerning the lands

of ——— and oblige us, and our successors, to abide by and obtemper their decreet arbitral to be thereanent pronounced, betwixt and the ——— day of ——— next to come, under the penalty of ——— besides performance.'

On the other hand, an arbitration, or reference to an arbitrator, is in this form; ' I *A.* do hereby refer and submit to *B.* and *C.* what shall be given by me to *D.* upon consideration of his pains taken for me, (*or upon any other consideration; which according to the circumstance of parties may be specified*) And whatever, &c. I bind and oblige me to pay the same to the said *D.* accordingly, with penalty, &c. And I consent to the registration hereof, and of the determination, in the books of session, &c.'

The decreet arbitral is the sentence pronounced by the arbiter, or arbitrator, one or more, upon the controversy, for ending whereof they were chosen by the contending parties. In the form of which sentence these things are specially to be regarded.

1. That it be made according to the very submission touching the thing compromised, and in every circumstance thereof.
2. That it put a final end to the controversy.
3. That it appoint either party to do, or give, to the other, something beneficial in appearance at least.
4. That the performance be possible, and lawful, and attainable by the party.
5. That

5. That nothing enter into the decreet that was not submitted, either expressly, or by necessary consequence.

The decreet arbitral is written in the signed blank on the other side of the submission, and is in this or the like stile.

‘ WE ——— judges arbitrators under written, with the special advice
 ‘ and consent of ——— oddsmen and oversmen after mentioned, &c. *Forasmuch as* —
 ‘ and ——— on the one and other parts, have
 ‘ submitted themselves to us the said, &c.
 ‘ and, in case of variance betwixt us, to &c.
 ‘ oddsmen and oversmen, equally and indifferently chosen by both the said parties, concerning all actions, questions, and debates standing betwixt the said parties, and which
 ‘ either of them lays, or may lay to others charges, for whatsoever cause or occasion
 ‘ bygone, preceeding the date of the said submission, conform to their claim given in
 ‘ by either of them thereupon. And the said parties having referred the particulars above
 ‘ and underwritten to the determination of us the said judges arbitrators, with power
 ‘ to us to decide therein, and, in case of variance betwixt us, by the said ——— oddsmen and oversmen above mentioned, as
 ‘ more length is contained in the said submission written on the back hereof. And
 ‘ we the said judges arbitrators, having accepted

cepted the said matters debateable upon us, and we being therewith well and ripely advised, and, for our better help and supply thereintil, having taken the advice and resolution of the said oddsmen and oversmen within and above named, and after large hearing, conference and communication with both the said parties thereanent, and consideration of the respective claims given in to us by the said parties, we, with the special advice and consent of the said ——— oddsmen and oversmen above named, all in one voice, after mature deliberation, having GOD and a good conscience before our eyes, have decerned and ordained, and, by these presents, decern and ordain in manner following, (*Here insert the decerniture, and then say*) And this is our decreet and sentence, which, to all and fundry whom it effeirs, we manifest and make known, and consent that the same, with the submission within written, be inserted and registred, &c. &c. &c.

Seeing our proposed method would not allow us to comply with the ancient order in all law-writings, to begin with what concerns the church, we shall conclude with a call to a minister, by the heritors and elders of a parish, which was of late in place of the patron's presentation, and in some places is still observed.

A Call

A Call to a Minister.

WE the heritors and elders of the
 rochin of *L*——— being credible
 informed of the literature, qualification, and
 good conversation of *A.* late minister of
 the gospel at *B.* and of his desire to con-
 tinue in the function of the ministry with
 in the kirk of GOD; *therefore*, we have no-
 minated, called and presented, as we, by
 these presents, nominate, call and present
 the said *A.* during all the days of his life-
 time, to be first minister of the said kirk and
 parochin of *L.* and to the manse and glebe
 and constant, local, modified stipend be-
 longing thereto, conform to the decreet of
 locality and provision of the said kirk, which
 is now vacant by the death of ———
 late minister thereat; requesting the reve-
 rend moderator and ministers of the pres-
 bytery of *L.* to admit and receive the said
A. to be minister of the foresaid kirk, and
 of the foresaid parish, and to the manse and
 glebe thereof, and constant, local, modi-
 fied stipend belonging thereto, and to au-
 thorize him with a testimonial of his ad-
 mission to the same in due and competent
 form as effeirs; *and likewise*, requesting
 the lords of *council* and *session*, upon sight
 of this our presentation, with the a. m. ion
 and

and institution to follow hereupon, to grant letters of horning, upon a simple charge of ten days only, at the instance of the said A. for readily answering, obeying, and making payment to him, his factor, servants, and others in his name, of the foresaid stipend, and other duties belonging to the said kirk, conform to the decret of locality above written, and that for the erop and year of GOD ——— in so far as the representatives of the said ——— have no right thereto, and yearly and termly in all time coming, during his lifetime, and serving the cure at the said kirk.' Registration for preservation.

Another Form of a Call.

WE the heritors and elders of the parochin of ——— undersubscribing, considering that the kirk of ——— is vacant, by the decease (*or deposition*) of ——— and that, by the late act of parliament abolishing patronages, the nomination and calling of ministers to churches is given to the heritors and elders of the parochin; and we likewise considering the great abilities, faithfulness, and diligence of ——— in the office of the ministry, and his singular and unblameable life and conversation, do therefore unanimously,

P p

' with

' with one consent, nominate, elect, call and
 ' present the said ——— to be minister at
 ' ——— and to the modified, constant and
 ' local stipend, manse and glebe of the same,
 ' earnestly intreating the said ——— to ac-
 ' cept of this our unanimous call, and re-
 ' questing the moderator and brethren of the
 ' presbytery of ——— to receive and admit him
 ' to the ministry of the said kirk and parochin
 ' of ——— with all solemnities requisite
 ' in the like case, and to the manse, glebe,
 ' and constant, local, and modified stipend
 ' belonging thereto; and requesting the lords
 ' of *council and session*, upon sight of this our
 ' call and presentation, with the collation
 ' and institution to follow hereupon, to grant
 ' and direct letters at the instance of the said
 ' ——— for readily obeying and making pay-
 ' ment to him, his factors, servants, and o-
 ' thers in his name, of the foresaid local, con-
 ' stant and modified stipend for the present
 ' year 1764, and in time coming, during his
 ' lifetime, or service of the cure at the said
 ' kirk, and for entering him to the possession
 ' of the said manse and glebe, and removing
 ' the possessors from the same. In testimony
 ' whereof, we have subscribed, &c.'

When the other parishioners, besides the
 heritors and elders, agree to the call, an
 approbation in the following form is conve-
 nient: ' We undersubscribing parishioners of

' ——— do

‘ — do allow and approve of the call given
 ‘ by the heritors and elders of the said parish
 ‘ to *B.* to be our minister, and heartily con-
 ‘ cur therein. In witness whereof, &c.’

The *act* 26. *parl.* 1693, discharging the
 power of presentation of ministers by patrons,
 being rescinded, and the law of patronage,
 by *act* 12. of the *parl.* Queen *Anne*, holden
 the tenth year of her reign, *annis* 1710 and
 1711, it is fit to give the form of the writ of
 a patron’s presentation of a minister to a va-
 cant church.

‘ I *A.* undoubted patron of the parochin and
 ‘ parish-kirk of ——— to the reverend
 ‘ moderator and remanent members of the
 ‘ presbytery of ——— greeting: *Forasmuch as*
 ‘ the said kirk of ——— is vacant in our hands,
 ‘ and at our gift and presentation, by the
 ‘ decease of the reverend ——— late minister
 ‘ thereof, and I being desirous that the same
 ‘ be provided with some meet, qualified, and
 ‘ godly man, fitted for the exercise of the
 ‘ holy ministry, and being informed of the
 ‘ ability, literature and qualification of *B.*
 ‘ to discharge the office and function of a
 ‘ minister within the church of GOD, and
 ‘ of the great pains, travel and study taken
 ‘ by him these several years past for that ef-
 ‘ fect; *therefore*, I have nominated and pre-
 ‘ sented, and, by these presents, &c. the said
 ‘ *B.* to

• *B.* to the ministry of the said parochin and
 • parish-kirk of ——— and to the manse, glebe
 • and stipend, with all the privileges, profits
 • and emoluments of the same, as was for-
 • merly possessed by, and paid to the said —
 • late minister thereof, and that for the crop
 • and year of GOD 1764, and yearly in all
 • time coming during his incumbency there;
 • *requiring*, and hereby desiring you, the reve-
 • rend moderator and the remanent brethren
 • of the said presbytery of ——— to take trial
 • of his qualifications; and being found qua-
 • lified, to admit him to the said church, and
 • grant collation and institution conform to
 • the laws and acts of parliament made there-
 • anent; *requesting* also the lords of *council*
 • and *session*, or any other judges competent,
 • upon sight hereof, and of his said collation
 • and testimonial of admission, to grant let-
 • ters of horning on a simple charge of ten
 • days, and other executorials as effeirs, at
 • the instance of the said *B.* for causing of
 • him, his factors, servants, and others in his
 • name, to be thankfully answered, obeyed,
 • and paid of the said stipend, with all the
 • profits, privileges and emoluments of the
 • said kirk of ——— for the said crop and year
 • of GOD 1764, and siklike yearly in all
 • time coming, during his incumbency, in
 • due form, as effeirs.'

If the patron be pupil, the presentation is
 given by his tutors, thus; ' We *A. B. C.* and
 ' *D.* tutors:

'D. tutors testamentars to a noble earl E.
'earl of F. &c. ——— is vacant, and fallen
'in the hands of the said E. earl of F. our
'pupil, and at his gift, &c.'

Every presentation should narrate the *modus vocandi*, so that if the church was vacant by deprivation of the last incumbent, the presentation mentions the same thus; ———
'Through B. last minister thereat, his being
'deposed from the office of the ministry in
'the said parish, by the lords of his majesty's most honourable privy council, conform to the act of the date ——— or by the
'synod of ——— or by the general assembly of the church of Scotland, met at ———
'upon the — day of, &c.'

Or if the church was vacant by transportation of the last minister to another church, the presentation proports it thus; 'Through
'the said B. last minister thereat, his being
'duly and lawfully transported from the said
'church of C. to the church of D.'

The mentioning of the stipend in the clause of presentation is various, as thus;
'—— To the constant, local, and modified
'stipend of ————— manse, glebe and pasture of the same, for the half of the crop
'and year of GOD 1764, and of all crops
'and years thereafter during the said B. his
'lifetime, and serving the cure at the said
'kirk, to be peaceably bruiked, enjoyed and
'possessed by him, siklike, and as freely, in all
P P. 3. ' respects,

‘ respects, as the said ----- bruiked, enjoyed
 ‘ and possessed the same of before.’

If the patron present a minister who is incumbent of another kirk, he does not require the presbytery to take trial of his literature and qualification, but the clause is thus; ‘ Re-
 ‘ quiring, since the qualification, literature, and
 ‘ good conversation of the said *B.* has been
 ‘ sufficiently tried already, before he was ad-
 ‘ mitted to be actual minister of the said kirk
 ‘ of ---- whereby he has been found able and
 ‘ qualified hitherto, to use and exercise the of-
 ‘ fice and function of the ministry within the
 ‘ kirk of GOD, that ye admit him to the said
 ‘ kirk of *B.* and that ye give order that he
 ‘ may have collation and institution in the said
 ‘ benefice, according to the course of ecclesia-
 ‘ stical discipline established by the laws of
 ‘ *Scotland*, and order used in such cases. And
 ‘ if any impediment happen herein, that ye
 ‘ make to me due and lawful certification
 ‘ thereof, to the end I may present another
 ‘ thereto in time convenient.’

The clause of recommendation to the lords may be thus; ‘----- Direct letters of
 ‘ horning at the instance of the said *B.* against
 ‘ all and sundry heritors, liferenters, con-
 ‘ junct fiars, feuars, farmers, tenants, tackf-
 ‘ men, occupiers and possessors of the lands
 ‘ within the said parochin, and all others ad-
 ‘ debted and in use of payment of the fore-
 ‘ said local and modified stipend.’

To the clause for execution I have seen
 objected the following one, which is very
 proper; ' ----- And for commanding and
 charging the occupiers and possessors of the
 manse, glebe and pasturage thereof, to flit
 and remove themselves, and leave the same
 void and redd, to the effect the said *B.* may
 enter thereto, and peaceably bruik and en-
 joy the same during the space foresaid.'

Because, according to the present law, some
 patrons have right to the tithes remain-
 ing, and which will be over and above the
 minister's modified stipend, the patron so cir-
 cumstanced should, in the writ of his pre-
 sentation, make a reservation of this right,
 which is done by the following clause insert-
 ed before the registration,----- ' Reserving
 ' always to me, my heirs and successors, that
 ' part and portion of the tithes, parsonage
 ' and vicarage, and others of the foresaid pa-
 ' rochin, which shall be found to be over and
 ' above the stipend modified and localled to
 ' the minister.'

I shall conclude this by giving a singular
 case of presentation. ----- ' *Forasmuch as* the
 ' reverend *A.* present minister at the kirk of
 ' *B.* is become valetudinary, and we being de-
 ' sirous that the parish suffer no prejudice
 ' through his indisposition, and being infor-
 ' med of the ability, &c. of ----- there-
 ' fore we have nominated and presented, and
 ' hereby nominate and present the said -----

' to

‘to serve in the ministry of the said parish
 ‘during *A*’s life, and in conjunction with
 ‘him, and to the manse, glebe, &c. to one
 ‘half of the stipend, with all the privileges,
 ‘profits and emoluments of the same, as is
 ‘now possessed by, and paid to the said *A*.
 ‘for the crop and year 1764, and yearly du-
 ‘ring the said *A*. his life, and after his de-
 ‘cease to the whole ministerial charge, and
 ‘the whole stipend in all time coming du-
 ‘ring his incumbency there.’

In the time of episcopacy a presentation
 by a bishop, who was both patron and or-
 dinary, comprehended likewise a collation;
 and wanted the first request concerning the
 trial of the qualifications of the person pre-
 sented, but, in place thereof, it mentioned
 that he had tried and found him fit, as will
 appear from the collation following; and if
 the bishop was only patron, and the church
 did ly within the diocese of another bishop,
 the form of the presentation differed not from
 that by a laick patron.’

Tho’ in time of episcopacy, and in the
 former times of presbytery, edicts and col-
 lations in their proper stile were used, yet
 now all this is transacted by way of act in
 the presbytery; nevertheless, for clearing
 up the law of presentation, I here give the
 stile of both.

An edict by the bishop is thus;——— ‘*A*.
 ‘by the mercy of GOD, bishop of *B*. to my
 ‘well

well beloved brother the moderator and brethren of the presbytery of *B.* executors hereof, conjunctly and severally, specially constitute, greeting: Whereas *C.* by his letters of presentation of the date ——— nominated and presented, &c. (*Here narrate briefly the presentation*) Therefore, we require you to pass to the church of *D.* the ——— day of ——— being the Lord's day, and there, immediately after divine service, before dissolving of the congregation, make due and lawful intimation to the heritors and parishioners of the said church, if they, or any of them, have any reasonable thing to object against the said *E.* (*the minister presented*) why he should not be admitted minister at the said church, they may compare before us, on the ——— day of ——— at ——— betwixt 10 and 11 hours in the forenoon, for making the same known to us, with certification to them, if they fail to compare there, that they shall not be afterwards heard to object against him, but we will proceed to his admission; and we require you to cause a just copy hereof to be affixed upon the most patent door of the said church. For doing whereof, this our edict, which ye are to return to us duly executed and indorsed, shall be your warrant. Given under our hand at ———

The

The collation by the bishop, which is signed after executing the edict, and when none appears to object, is in this form.

‘ *A.* by the mercy of GOD, bishop of B
 ‘ within whose diocese the kirk and parish
 ‘ under written lies, to ——— my well
 ‘ beloved brethren, or any of them, our com-
 ‘ missioners to the effect after specified, spe-
 ‘ cially constituted, greeting; *Forasmuch*
 ‘ *(Here narrate the edict and presentation brief-*
 ‘ *ly)* and now having taken trial of the lite-
 ‘ rature, qualifications and good conversari-
 ‘ on of the said *C.* and finding him fit, able
 ‘ and qualified to exercise the office of the
 ‘ ministry within the church of God; and
 ‘ also, having caused intimate to the heritors
 ‘ and parishioners of the said kirk, the said
 ‘ presentation by way of edict, together with
 ‘ our intimation to admit him conform there-
 ‘ to; and none having appeared to object in
 ‘ the contrary, and withal having taken his
 ‘ oath for acknowledging his majesty’s royal
 ‘ authority, due obedience to us his ordi-
 ‘ nary ——— and other engagements usual
 ‘ and necessary: We therefore have admit-
 ‘ ted and received, and, by these presents, &c.
 ‘ the said *D.* to be minister at the said kirk
 ‘ of ——— *(Here copy the request to the bishop*
 ‘ *as in the presentation)* And to the effect that
 ‘ said *A.* may be legally and orderly settled
 ‘ therein, we require you, our beloved bre-
 ‘ thren, or any of you, conjunctly and se-
 ‘ verally

verally, our commissioners foresaid, to the effect under written specially constituted, to pass with the said C. to the said church of ——— manse and glebe thereof respectively, and there, with all requisite solemnities, enter the said C. to the service and office of the ministry at the said kirk, and to give him institution thereof, corporal, actual and real possession of all pertaining to the same, constant, local, modified stipend, manse, glebe, and others above written, and that for the crop and year of GOD above mentioned, and thereafter during his lifetime and service of the cure at the said kirk, as said is; requesting hereby the lords of council and session, upon sight of the foresaid presentation with these presents, and the institution to follow thereupon, &c. (*as in the presentation.*) In witness whereof, &c. the seals of our office is hereunto appended at——.

A collation by a moderator and members of a presbytery, who came in place of the bishop after abolishing of episcopacy, is thus;

——— ' We the moderator and remanent brethren of the presbytery of ——

To our lovit, brethren, A. minister of B. and C. minister of D. &c. greeting: *Forasmuch as* A. as undoubted patron, &c. hath nominated, &c. (*Here narrate, as before, the presentation*) wit ye us therefore, conform to the said presentation, to have examined

' and

' and tried the literature, qualification, life
 ' and conversation of the said *F.* and have
 ' found him apt and able to exerce the said
 ' function of the ministry, and in his life
 ' blameless and sincere, and to have received
 ' his oath for acknowledging our sovereign
 ' lord's authority, and for giving due obe-
 ' dience to the presbytery. *And also,* having
 ' caused intimate to the heritors, (*as in the*
 ' *collation by the bishop.*) Herefore we re-
 ' quire you, that, incontinent after the sight
 ' hereof, ye pass to the said parish kirk of
 ' *B.* and there, in presence of a notary and
 ' famous witnesses, enter him in real and ac-
 ' tual possession of the stipend appointed for
 ' the said kirk, manse, glebe, and others spe-
 ' cially set down in this presentation there-
 ' to above written, by delivering to him the
 ' book of GOD, called *the bible*, and the
 ' keys of the kirk-door, as use is in such
 ' cases; and that ye give him institution in
 ' the said kirk upon the warrant of this our
 ' precept and collation. The which to do
 ' we commit to you our full power, by these
 ' presents, (*written by, &c.*) In witness where-
 ' of thir presents are subscribed by the pre-
 ' sent moderator of the presbytery of *B.* for
 ' himself, and in name and behalf of the
 ' remanent brethren of the said presbytery.'

Presentation of a School-master by a Patron.

BE it known, &c. undoubted heritable patron of the school of *B.* constant modified stipend and casualties thereto belonging, with the special advice and consent of ————— my curators undersubscribing, for their interest: *Forasmuch* as we are sufficiently informed of the literature, piety, loyalty and good conversation of *C.* and that he is sufficiently able and qualified to exercise and discharge the duty and function of school-master, and to teach the four parts of the grammar, and to instruct children therein, to the glory of GOD, benefit of youth, and good of the kingdom; *therefore wit ye me*, with advice and consent of my said curators under subscribing, to have nominated and presented, as I, by the tenor hereof, nominate and present the said *C.* to be school-master and teacher of the grammar in all its parts, and of authors usual to be taught therewith; *as also*, to instruct children to read and write in vulgar language, and to serve the cure at the said school of *B.* during all the days of his lifetime; *as also*, to the constant modified stipend belonging to the said office, and formerly in use to be paid to the incumbent

Qq

bent

bent thereat, to the manse thereof, and
 whole other profits, casualties, duties and
 emoluments pertaining, or that are justly
 known to pertain thereto, which are here
 holden as repeated *brevitatis causa*, and that
 of the crop and year of GOD—and year-
 ly and termly in time coming during his
 lifetime and service of the said cure at
 the said school, now vacant, fallen and be-
 come in my hands as patron, and at our
 gift and presentation by decease of ———
 late school-master there, requesting hereby
 the lords of council and session, upon sight
 of these our letters of presentation, and in-
 strument of institution to be given to the
 said C. thereupon, immediately to direct
 letters of horning, at his instance, against
 all and sundry the heritors, feuars, far-
 mers, tenants, possessors and others addebe-
 ed, liable and in use of payment of the said
 local modified stipend, and other casualties
 belonging to the said cure, to readily an-
 swer, obey and make thankful payment to
 him of the same for the crop above writ-
 ten, and yearly and termly in time com-
 ing during his lifetime and service of the
 said cure at the said school. In witness
 whereof, &c.

A Presentation of Bursar.

"I *A.* patron of the bursary underwritten,
 "to the principal, masters and regents
 "of the college of ——— greeting: *Foras-*
 "*muchas* the place of bursary within the said
 "college, and stipend or pension of ———
 "belonging thereto, founded by ——— last
 "possessed by *B.* is now, by his finishing his
 "course of philosophy in the said college,
 "vacant at our gift and presentation, and I
 "being most willing that another burfar and
 "student of philosophy be placed therein, and
 "having information and knowledge of the
 "docility, hope and good expectation of *C.*
 "and of his proficiency in the *Latin* and *Greek*
 "languages and other literature, therefore
 "I have nominated and presented, and, by
 "these presents, &c. the said *C.* to be burfar
 "and student of philosophy in the said col-
 "lege, in place of *B.* and to the yearly pen-
 "sion belonging thereto, requiring you the said
 "principal, masters and regents of the same
 "college, to receive him thereto, and to all
 "the profits, privileges and commodities be-
 "longing to the same, and whereof any other
 "of his predecessors was in possession, and to
 "continue therein until the expiration of his
 "course of philosophy in the said college.
 "In witness, &c."

Qq 2

It

It remains that we give the form of the clauses which are common to all writs, viz. *The clause of registration, and clause of subscription, date and witnessing, or testing the writ.*

Of the Clause of Registration.

THe word *register* is derived from the old *French* *gister*, i. e. *in lecto reponere*, and signifies the *office books, and rolls*, where in the *proceedings, acts and sentences of any court are kept and recorded*. The chief keeper of all the records of *Scotland* is called *The clerk of register*, and, by correption, *The clerk-register*.

By the laws of *Scotland*, all executorial diligence must proceed upon the sentence of a judge, which is either compulsory, as when it proceeds upon a process or action intended before the judge; or it is voluntary, as in the registration of private obligations and other deeds, and towards obtaining of this decret a procurator must be employed: So that the clause of registration serves for appointing a procurator to compear for the party obliged, or signer of the writ, before any competent judge, and to consent that decret of registration may be interponed, to the end that letters of horning, caption and other execution, in form as effects, may be obtained.

tained thereupon. The writ having this clause is delivered to the clerk of court, who keeps the principal, and gives out an extract thereof, which is called *a decret of registration*.

When you are about to register a writ, regard must be had to the competency of the judicature, and of the extent of the judge's territory; for an inferior judge's decret or precept cannot be a foundation of diligence to be put to execution by his own officers without the limits of his jurisdiction, wherefore the party against whom decret of registration is extracted ought to live in that judge's territory. But if the diligence proceed *ex deliberatione*, or *per decretum domino- rum concilii*, because the jurisdiction of the lords is universal over all the lieges, the diligence that is issued out by their authority can be put to execution in any part of the kingdom.

Tho' a writing may be obligatory and binding without a clause of registration, yet it is not so perfect except it have one, which is threefold, either for execution only, or for preservation only, or for preservation and execution if needful.

A clause of registration for execution is requisite in all writings and obligations simple, wherein the performance is not deferred to any uncertain time, but the obligation must certainly be fulfilled at the time

prefixed in the writing: Such are bonds of borrowed money, and the like.

A clause of registration for preservation has been invented by our lawyers for the better preserving writs of importance in the publick archives of the kingdom, where they are more secure than in the custody or charter-chests of private persons; and this clause is in ancient writs expressed by the words *ad futuram rei memoriam*, and ordinarily adjected to writings whereupon no execution is needful; for a clause of registration for execution operates preservation as well as this. And the writings which contain either of these sorts of registrations, are left in the register of the court, and an authentick extract of the principal, signed by the clerk-register, or the clerk of court, is delivered to the party.

By the act of parliament 1698, all probative writs may be registred in any publick register competent, as if they did bear a clause of registration, and the principals are to be given back. The design of this registration is neither for execution nor preservation, but operates only, that the extract in any civil process except in improbation, is as probative as the principal.

The two clauses of registration, for preservation, and execution if needful, are conjoined and put together in writings of conveyance, and others, where the principal and
direct

direct purpose of parties is not to oblige one another, but to transfer dominion, or terminate differences; but because, in these writings, there is ordinarily an obligation of warranty adjected, therefore, in case it be incurred, execution upon the decret of registration will become needful.

The clause of a registration for execution is thus; ‘ And, for the more security, I consent, and I am content, that these presents be inserted and registred in the books of council and session, or in any other judicatory competent, to have the strength of a decret of the judges thereof interponed thereto, that letters of horning on six days, and other execution needful, in form as effects, may pass thereupon; and for that effect I constitute ——— my procurator. In witness whereof, &c.’

But more briefly, thus; ‘ And that these presents may be registred in the books of any judicatory competent, that, upon a decret of the judges thereof, letters of horning on six days, and other execution, in form as effects, may pass, I constitute, &c.’

If the days to which horning is to be executed, (*the ordinary space being six, but may be made 10, 20, &c.*) be not expressed in the clause of registration, the time in law is interpreted to be fifteen days, within which obedience must be given to the charge.

The

The clause of registration for preservation only is in this form; ——— ‘ inserted and
 ‘ registred in the books of council and sessi-
 ‘ on, or of any other judicatory competent,
 ‘ therein to remain for preservation, (or ad
 ‘ *futuram rei memoriam*) I constitute ———
 ‘ my procurators.’

But the clause of registration of real securities, or renunciations, which, for publication thereof to the lieges, are appointed to be recorded in a special register, is thus; ——— ‘ registred in the books of council
 ‘ and session, or in the general or particular
 ‘ register of sasines, reversions, or in any
 ‘ other judges books competent, therein to
 ‘ remain for preservation.’

A clause of registration for preservation, and execution if need be, is thus; ———
 ‘ therein to remain for preservation, and, if
 ‘ need be, to have the strength of a decreet
 ‘ of any of the judges interponed thereto
 ‘ that letters of horning and other executi-
 ‘ on, in form, as effeirs, may pass thereon,
 ‘ and constitutes.’ Or thus, more briefly:
 ‘ And, if need be, to have the strength of
 ‘ a decreet, and to receive all execution ne-
 ‘ cessary as effeirs, and constitutes ——— my
 ‘ procurators.’

Of the Subscription of Writs.

THE clause of subscription is in the end of every writ, and crowns and perfects all the former, for without it the writing is regarded as an useless piece of waste paper; wherefore the writ must be signed by the party granter thereof before two subscribing witnesses, who know the party to be the person he calls himself, if the body of the paper be not written by the signer himself; and though holograph writs signed without witnesses are obligatory and probative, yet they are liable to many exceptions and inconveniencies.

If the party cannot write himself, either because he never was taught so to do, or that, through supervenient infirmities, sickness, or other accidents, he is become incapable to write, in that case two notaries, and four witnesses who know the party, are made use of in writings of importance.

If the granter of the writ be a pupil, whether he can write or not, he needs not sign, for the subscription of the tutor alone is sufficient.

Not only the principal parties, but also the consenters should sign, and more especially, if upon their consent and subscription the strength and effect of the paper depend; as
is.

is the consent of a husband and of curators, to the deeds done by the wife and the minor, though in other cases the subscription of the principal party operates against himself.

By the act of parliament 1681, the name and designation of the writer and witnesses must of necessity be inserted and expressed in the body of the writ, which is done in the clause of subscription; and by the 175th *act, parl.* 1593, the name and designation of the writer is ordained to be inserted in the latter end of the writ, before inserting of the witnesses; but by practice the designation of the writer may be inserted with that of the witnesses.

The various Forms of the Clause of Subscription.

‘ **I** N witness whereof I have signed these presents (written on stamped paper by ‘ A.) at *Edinburgh*, &c.’ And this is used albeit a party sign by two notaries before four witnesses, *quia quod quis per alium facit, per se facere videtur.*

If the writ be holograph, ‘ ——— In witness whereof, I have written these presents with my hand on stamped paper, and have subscribed the same at *Edinburgh*.’

When

When the tutor signs for his pupil, ‘ ——— in witness whereof, I, for myself, and in name and behalf of my said pupil, have subscribed these presents.’

When the writ is granted by principals and consenters, ‘ ——— In witness whereof, I, with consent foresaid.’ Or, ‘ I and the said consenters have subscribed these presents.’ Or, in general, ‘ In witness whereof, we have signed these presents.’

Of the Date and Testing of Writs.

IN *Scotland* no paper is formal and valid without a date, that is, except the writing or obligation expresses the place where, the day of the month and the year of GOD, when the same was signed by the party or parties; and this date, in all single writs, such I mean as need only to be signed by one of the parties contracters is expressed after the clause of subscription: But in *bipartite* or *tripartite* writs, where the subscription of both contracters is requisite to make the contract formal and valid, the date is at the beginning, as may be seen in the foregoing examples of contracts, tho’, nevertheless, the same date is relatively expressed after the clause of subscription.

If the writ be signed by the several subscribers at divers places, or on different days,
this

this must be expressed in the date, tho' the respective places and days, which agree to the several subscribers, are fully expressed in that part of the writ which rehearses the names and designations of the witnesses, and will be more plain in the following instances and examples.

It is always adviseable to have witnesses to the party's subscription even of holograph writs, and it is absolutely necessary in writs not written by the subscriber, and which the writer sets down after the date, in the end of the paper, or after the subscription, and this is the last clause of a writ.

In simple writs these two clauses are thus
 ' In witness whereof, &c. I have subscribed
 ' these presents, at *Edinburgh* the first day of
 ' *October*, in the year of GOD 1764, before
 ' these witnesses, *A. B.* and *C.* his servant.'

When there are two subscribers, who sign at different places, tho' upon the same day and before the same witnesses, you write thus
 ' At *Edinburgh* and *Leith*, the first day of
 ' *October* 1764, before these witnesses, viz
 ' to the subscription of the said *A.* at *Edinburgh*, and to the subscription of the said *B.*
 ' at *Leith*, *C.* of *D.* and *E.* of *F.*

If two or more subscribers sign at the same place, but upon different days, and before the same witnesses, the date and testing of the writ is thus; ' At *Edinburgh*, the first and
 ' fifth days of *October* 1764.' Or, when the
 months

months are different, you say, ' the first day of *October* and the fifth day of *November* 1764. Or, again, when the two subscriptions are not in the same year, you express the date thus; ' The first day of *December* 1764, and the tenth day of *January* 1765, before these witnesses, viz. to the subscription of the said *A.* upon the said first day of *December*, and the subscription of the said *B.* upon the said tenth day of *January*, *C.* of *D.* and *E.* of *F.*'

If there be different witnesses to the two subscriptions, you express it thus; ——— before these witnesses *respective*, viz. to the subscription of the said *A.* *C.* of *D.* and *E.* of *F.* and to the subscription of the said *B.* *G.* of *H.* and *I.* of *K.*'

When two parties sign at different places, upon different days, before different witnesses, it is thus expressed; ' At *Edinburgh* and *Berwick*, the first day of *December* 1764, and the tenth day of *January* 1765, before these witnesses respectively, viz. to the subscription of the said *A.* at *Edinburgh* the said first day of *December* 1764, *C.* of *D.* and *E.* of *F.* and to the subscription of the said *B.* at *Berwick*, the said tenth day of *January* 1765, *G.* of *H.* and *I.* of *K.*'

In contracts, or *bipartite* and *tripartite* writs, the date is at the head of the writ, and is expressed as in the cases already set down; but the clause of subscription is thus; ———

R r

' have

‘ have subscribed these presents, day, place,
 ‘ month, and year of GOD above written,
 ‘ before these witnesses, &c.’ conform to
 the cases already mentioned. But I think
 this a better form and stile, ‘ ——— have sub-
 ‘ scribed these presents, at the place or places,
 ‘ and upon the day (or days) of the month
 ‘ (or months) in the year (or years) of GOD
 ‘ above rehearsed, before these witnesses, &c.’

If there be a marginal note, the same must
 be signed, and the testing of the writ must
 bear that the signing witnesses to the sub-
 scription of the body of the writ are also wit-
 nesses to the subscription of the marginal
 note, thus; ‘ ——— Before these witnesses,
 ‘ A. and B. who are also witnesses, (*and, in*
 ‘ *case there be blanks which are filled up, you*
 ‘ *say*) to the filling up of the *blanks* in the
 ‘ body of the writ, and to the subscription
 ‘ of the marginal note.’

If the writer be one of the witnesses, and
 in the clause of subscription is named and
 designed *writer*, in the testing he may be de-
 signed thus; ‘ Before these witnesses A. and B.
 ‘ writer hereof.’

If the writer of the body of the writ be
 not present at the subscription, so that ano-
 ther person fills up the blanks, and writes the
 date and witnesses names, if he be also a
 witness, you say, ‘ ——— B. Filler up of the
 ‘ blanks, and writer of the date and witnesses
 ‘ names.’

‘names.’ Or, if he be not a witness, after the witnesses names, you say, ‘The blanks, date and witnesses names being filled up and written by C.’

Thus much of the form and stile of these clauses: What is needful to be noticed and observed in order to the formalities of writs, and the import in law of their several clauses, is referred to my *analytical and homological treatise of obligations, securities and conveyances (a)*.

Seeing, by some late acts of the *British parliament*, it is appointed, that the parchment or paper, on which several conveyances and deeds are written, must be stamped, and pay a duty and tax, it is fit to know what these securities are; and, *first*, by an act, in the tenth year of Queen *Anne*’s reign, 1712.

R r. 2.

Every

(a) This treatise our author never published; but his treatise upon *heritable securities* will be made public in a short time.

			£. s. d.	
	<i>Instrument of resignation of any heritable right, as</i>	<i>Messuage, House, Lands, Tenements, Hereditaments, Tithes, Mills, Fishing, &c.</i>	0 2 3	
<i>Every skin, or piece of vellum or parchment, and sheet or piece of paper, on which shall be ingrossed or written, any</i>	<i>Charter of</i>	<i>Resignation, Confirmation, Novodamus, Apprising, Adjudication,</i>	0 2 3	
	<i>Retour of any service of heirs, precept of clare constat</i>		0 2 3	
	<i>Safine on a</i>	<i>Mortgage, or wadset, Heritable bond, Alienation or disposition, Charter, Precept of clare constat, Retour, Apprising, Adjudication.</i>	0 2 3	

And

And also, by an act in the twelfth year of queen *Anne's* reign, 1714.

Pays £. s. d.

any title of	Honour, Dignity, Promotion, Franchise, Liberty, or Privilege,	to any	Person or Body	Politick or Corporate	2	0	0
	Reprieve or Relaxation				2	0	0
Every thin or piece, &c. on which shall be engrossed or written,	Grant from his majesty, of a sum exceeding 100 <i>l. Sterling</i> , which shall pass great or privy seal alone				2	0	0
	Grant of an office or employment in <i>Great Britain</i> yielding above 50 <i>l.</i> value per annum				2	0	0
Admittance, or Instrument for admitting of an			Advocate	- - - -	2	0	0
			Attorney	- - - -	2	0	0
			Clerk	- - - -	2	0	0
			A fellow of the college	physicians - - -	2	0	0
			Notary	- - - -	2	0	0
			Procurator	- - - -	2	0	0
			Any officer in a court	or corporation, not	2	0	0
				being annual, yielding			
				not under 10 <i>l.</i> value	2	0	0
			Appeal from the high	court of admiralty	2	0	0
			Letters of mart	- - - -	0	5	0

Every <i>skin</i> or <i>piece</i> , &c. on which shall be ingrossed or writ- ten,	Institution,		made by a	£.	s.	d.
	or					
	Licence to	preach,	Presbytery	0	5	0
	Beneficial warrant - -			0	2	6
	Bond - - - -			0	0	6
	All deeds not otherways					
	charged - - -			0	0	6
	Indenture - - -			0	0	6
	Lease - - - -			0	0	6

Excepted bail-bonds, and assignments thereof, indentures for binding poor parish and charity children apprentices.

Transfers of stock	{	In any company -	0	2	3
		Society - -	0	2	3
		Incorporation - -	0	2	3

These respective duties are to be charged upon every one of the things or matters aforesaid, ingrossed in one *piece* of vellum, parchment or paper.

All writings, rights and obligations written on vellum, parchment, or paper, not marked with the stamps suited for the matters above specified, shall not be available in law or equity, unless as well the above duties re-
spective

pective be paid, as the sum of 5 *l. sterling* for every such thing. See page 332.

But seeing the general name of deeds and bail-bonds want explication, I subjoin the opinion of gentlemen learned in the law, shewing the names of such conveyances and bonds, in *Scotland*, as may be thought to fall under that denomination, and which are to be written on stamped paper or parchment.

ALL bonds and obligations, whether for payment of sums of money, or for performance of deeds.

All assignations, translations, retrocessions, and other conveyances of personal rights.

All dispositions of any moveable subject, and conveyances thereof.

All backbonds, declarations of trust, all kind of procuratories and factories.

All total discharges of personal bonds, obligations and contracts for payment of money, or performing of facts or deeds, and also total discharges of decreets and sentences.

Bonds of provision to one or more children are to pay as one deed.

Contracts of marriage, victual contracts, contracts of excambion, charter-parties, and all other contracts and agreements betwixt parties,

It

It may be considered, if submissions, being in effect an agreement betwixt parties to have their differences amicably taken away, upon which decreets arbitral follow, ought not to pay.

Vendition of ships, or parts thereof, or conveyances of the same.

All kinds of presentations by patrons to churches, chapels, bursaries, schools, and other benefices.

All deeds of mortification and donations, delivered by parties in their own lifetime.

All revocations made by minors, or by wives, and interdictions signed by parties.

All heritable securities, as heritable bonds, dispositions, feu-rights, wadsets, procuratories of resignation, both *in favorem et ad remanentiam*, and precepts of sasine when written on papers apart, reversions, regresses, renunciations, and grants of redemption, discharges of reversion, and all rights and conveyances of, and concerning such heritable securities.

All kind of real servitudes, granted by one party to another, affecting the granter's estate, whether in city or country.

All liferent provisions, tacks, leases and assédations, gifts of escheat, ward, non-entry, and other casualties of superiorities granted by subjects superiors, and grants and commissions by subjects to any office or employment in Scotland.

Bail-

Bail-bonds being excepted from the act, it is thought all bonds of cautionry to answer for a crime, or *judicio fisci*, and bonds of cautionry in suspensions, and loosing arrestments and lawborrowses, and all enactments made in court-books, where caution is to be found, are to be all understood as bail-bonds, and to fall under the exception.

To remember that charters, instruments of sasine, instruments of resignation, and precepts of *clare constat*, and indentures, pay duty already in *Scotland*, and seem to be excepted from any other duty by this act.

Nomination of tutors or curators seem not to pay, because not delivered in the grantor's life, and are of the nature of testaments, which do not pay, in respect that deeds in *England* are only understood such as are signed, sealed and delivered.

Since bills and inland precepts do not pay in *England*, it is thought reasonable they should not pay in *Scotland*.

Instruments of protest, and other instruments, though they be writs of importance, yet they are not thought to be deeds, because they are not signed by parties, but by notaries, who are publick officers, and of the nature of judicial acts.

Albeit it be agreed, that when stamped writs are put in the register, the extract signed by the clerk needs not to be stamped,

ed yet, because by the extract; it will not appear whether the principal paper registered be stamped or not, it is fit, to avoid fraud, that the extract signed by the clerk bear, that the principal, which lies in the clerk's hands, is written on stamped paper and, if the extract do not bear so, the same ought not to make faith, till it be instructed that the principal writ is stamped.

Our author, in the former editions, inserted a table for knowing the value of a term or annuity at interest upon interest at 6 *per cent.* but now, as money hath fallen in value, I have thought proper to calculate a new table at 4 and 5 *per cent.* and add to a table shewing at one view the decimal part of a pound *Sterling*; and I chose rather to put it at the end, than to place them in the manner they were in the other editions.

A. TABLE

TABLE shewing the present worth of 1 *l.* annuity, or tack-duty, to endure for any number of years contained in the table at compound interest at 4 *l.* or 5 *l.* per cent.

At 4 <i>l.</i> per cent.	At 5 <i>l.</i> per cent.	Explanation of the table.	No. of years.	At 4 <i>l.</i> per cent.	At 5 <i>l.</i> per cent.
		The first column, towards the left-hand			
0.9615	0.9523	shews the number of the years	26	15.9827	14.375
1.8860	1.8594	of the annuity or tack-duty, and right against it standeth the	27	16.3295	14.6430
2.7750	2.7232	present value of 1 <i>l.</i> of the said annuity or tack-duty, at 4 or 5 <i>l.</i> per cent. each	28	16.6630	14.8981
3.6298	3.5459	in their respective columns.	29	16.9837	15.141e
4.4518	4.3294	<i>Rule.</i>	30	17.2920	15.3724
5.2421	5.0756	Multiply the sum in the table	31	17.5884	15.5928
6.0020	5.7863	standing right against the number of years yet to run by the annuity or yearly	32	17.8735	15.8026
6.7327	6.4632	tack-duty, cutting off four figures from the	33	18.1476	16.0025
7.4353	7.1078	product towards the right hand, if multiplied by	34	18.4111	16.1929
8.1108	77.212	integers, and thus you have	35	18.6646	16.3741
8.7604	8.3064	the present value	36	18.9082	16.5468
9.3850	8.8632		37	19.1425	16.7112
9.9856	9.3935		38	19.3678	16.8678
10.5631	9.8986		39	19.5814	17.0170
11.1183	10.3796		40	19.7927	17.1590
11.6522	10.8377		41	19.9930	17.2941
12.1656	11.2740		42	20.1856	17.4231
12.6592	11.6895		43	20.3707	17.5459
13.1339	12.0853		44	20.5488	17.6627
13.5903	12.4622		45	20.7200	17.7740
14.0291	12.8211		46	20.8846	17.8800
14.4511	13.1630		47	21.0429	17.9810
14.8568	13.4885		48	21.1951	18.0771
15.2469	13.7986		49	21.3414	18.1687
15.6220	14.0939		50	21.4821	18.2559

money; but, if multiplied by decimal parts of a pound, cut off many decimal places as there are in the multiplicand and multiplier, and the value of these decimals may be found by having recourse to the following decimal table of the parts of a pound.

A TABLE shewing at one view the value
of any decimal part of a pound Sterling.

Shillings. Decimals.	Pence.	Decimals.	Dec.	s.	d.	f.
19.95	11	.045833	.001			
18.90	10	.041666	.002			
17.85	9	.037500	.003			
16.80	8	.033333	.004	1		
15.75	7	.029166	.005	1	1	
14.70	6	.025000	.006	1	2	
13.65	5	.020833	.007	1	3	
12.60	4	.016666	.008	2		
11.55	3	.012500	.009	2	1	
10.50	2	.008333	.01	2	2	
9.45	1	.004166	.02	4		
8.40			.03	7		
			.04	9		
			.05	1	1	
			.06	1	2	
			.07	1	4	
			.08	1	7	
			.09	1	9	
			.1	2		
			.2	4		
			.3	6		
			.4	8		
			.5	10		
			.6	12		
			.7	14		
			.8	16		
			.9	18		

*Explanation of this
table.*

The figure next the
decimal point, being
doubled, makes so
many shillings, but
if the figure 5 stands
in the next place,
add another shilling
to the former ones;
and if any other fi-
gure, the value will
be as in the table.

A TABLE

TABLE shewing how many years purchase a tack, or annuity, to endure for any number of years under 32, is worth presently, at interest upon interest at six *per cent.* shewing also how to discount any tack, with the true value of the reversion, after any number of years.

The explanation and use of this table.

Value of the purchase of a tack.				Value of the purchase of a tack.			
Years.	Months.	Decimal part of a month.		Years.	Months.	Decimal part of a month.	
1	0	1	0	17	10	5	8
2	1	9	9	18	10	9	9
3	2	8	1	19	11	1	3
4	3	5	9	20	11	5	7
5	4	2	5	21	11	9	3
6	4	1	0	22	12	0	5
7	5	7	0	23	12	3	6
8	6	2	5	24	12	6	6
9	6	9	6	25	12	9	4
10	7	4	3	26	13	0	0
11	7	10	7	27	13	2	5
12	8	4	6	28	13	4	9
13	8	0	3	29	14	7	1
14	9	3	6	30	14	9	2
15	9	8	5	31	13	11	0
16	10	1	3	2	14	1	0

The first column, towards the left, sheweth the years of a tack, and right against it stand the year, month, and decimal part of a month's purchase that such a tack is worth.

Example.

Suppose a tack to continue ten years, one desires to know the worth of it in a sum presently told down.

Look into the table for the figure 10. in the column that stands for the years of a tack, and against it, in the same line, in the three other columns, you find 7, 4, 3. which sheweth, such a tack is worth 7 years 4 months, and 3 tenth parts of a month's purchase.

By this table the value of the lots in the parliamentary lotteries may be calculated and known.

A P P E N D I X,

CONTAINING

GENERAL OBSERVATIONS

ON SEVERAL

FORMS OF WRITINGS,

AND

LETTERS OF DILIGENCE,

By a Gentleman of eminent Knowledge and
Practice in Business.

BEfore entering upon the styles of particular writings, it is necessary to premise and observe in general, what is common and necessary to all writings.

Writings may be divided into two sorts, either monolateral, which are such as are conceived binding upon one or more persons only, in favours of another; and these run in the first person: Or, by way of contract, binding upon both parties; and these are still expressed in the third person. And it is further to be observed, that in monolateral, granted by all peers, from lords, barons, and upwards, they were by the former practice made to speak in the plural number, *we* and *us*; but now peers, as well as gentlemen or commons, begin with *I* in the singular number.

It is to be further observed, that the design of all writs being to set down, explain, and perpetuate the intention of parties, with regard to the several subjects about which they may be versant, care ought to be taken to express this meaning, in as plain, fixed and determined words and language as can be devised, so as to avoid as much as possible, all manner of ambiguity; and to this it is owing, that writers, by their practice, introduced so many redundancies into stile, rather inclining, that their expressions should appear too florid, than that they should not convey in ample terms the meaning of parties; and hence have arisen the maxims in law, *Quæ redundant non vitiant scripturas, superflua non nocent*, and the like.

Again, it falls to be premised with respect to writs in general, that as all of them fall to be subscribed by the persons or parties who are granters thereof, so the method of doing this, which is commonly called the testing or conclusive clause, must be very nicely attended to, as it is regulated either by special statute or riveted practice, in the following particulars, in order to make the writ binding; *firstly*, The writer of the deed must be designed *2dly*, The place, day, month and year of subscribing must also be insert. *3dly*, Two witnesses are also to be insert and designed, either by their possessions, calling, or place of residence.

An omission of any of these particulars may be fatal to the deed; tho', as there are few rules without exceptions, cases may occur so very favourable, wherein the judges may perhaps decline setting aside the writ, *i. e.* tho' wanting one or other of these formalities; but this is never to be trusted to by writers, whose business it is, as much as possible, to avoid all possibility of doubt or objection, and not to leave their clients to the arbitrament of judges.

It is further to be observed in general, that all writers ought also to describe the granter, as well as the receiver, by their known and usual name, surname and designation; for, tho' no special statute has declared a writing to be void, where the granter or receiver are not specially designed, yet custom has, in a great measure, established it as a rule, that it is necessary to describe the parties to a writ, otherways than by their name and surname, which are common to a variety of different persons, and may apply to one person no way concerned in the deed, as well as to another; which has established the general rule, of always adding the proper description of the parties, by their possessions, profession and trade, place of abode, or known relation to some particular person, or the like.

It is further to be observed, that all writings in order to make them binding upon the

Sec 3

granters,

Granters must be subscribed by them; the Peers subscribe by their title of honour; the bishops, before the abolition of episcopacy, subscribed by the title of their diocess; and that all gentlemen and commoners ought to subscribe by their proper christian name and surname. This method of subscribing writs is specially enjoined by particular statute in the time of king Charles II. *par. 2d; sess. 3. chap. 21.* intituled, *An act concerning the privilege of the office of lyon king-at arms*; whereby it is allowed, that all commoners may contract the initial letters of their christian name; and if they incline, they may superadd to their subscription, the designation of their lands.

It is also to be further observed, that altho', for the conveniency and encouragement of trade and commerce, the judges have been in use, by the course of their decisions, to sustain bills and all such peculiar notes and obligations, tho' subscribed only by the initial letters of the party's name and surname, notwithstanding of the forementioned statute; yet, as the holder of the bill or writing, in these cases, is under the necessity of proving, that the person was in the habit of subscribing after that manner, in case the granter deny his subscription; so it is dangerous in writers, in any deed of consequence, to trust to such subscriptions: But where the party cannot write his name at length, recourse ought to be had to the proper method of supplying that established.

blissed by law, which is, by publick notaries, one or more, according to the nature of the writ; that is, if it is a writ concerning a subject which in value exceeds 100 *l. Scots*, then two notaries are requisite, and four witnesses; but, if the sum or subject of the writing is under 100 *l. Scots* of value, then one notary with two witnesses is sufficient, this last not being looked upon as a writ of importance; all which is regulated by statute *James VI. par. 6th, act 80th.*

Again, it is to be observed, that as writings, at the discretion of the writer or parties, may be either wrote on broadsides, or on leaves like those of a printed book; so, when they consist of more sheets than one, and are extended on broadsides, the junction of the one sheet to the other, must be signed on the margin; and when they are wrote in folio's or pages, every page is to be subscribed by the party, thro' the witnesses need only to subscribe the last page or sheet, in either case, agreeable to the *act 15th, sess. 6th, par. 1. of King William, anno 1696.* Instruments of fame are excepted from this rule, which are required by law to be signed by the witnesses on each page.

All these rules, and this anxious care, in relation to the form of testing and subscribing of writings, introduced by custom and experience, and supported by the legislature in a variety of acts of parliament, is intended to secure against the corruption of mankind; and
happened

to prevent forgery, which the law has made a capital crime; and too many examples have happened to justify the necessity of that security

Follows the Stile of a moveable Bond.

‘ **I** *A. B.* of ——— grant me to have in
‘ constantly borrowed from *C. D.* of ——— the
‘ sum of 1000 *l. sterling* money, whereof
‘ acknowledge the receipt, renouncing all ob-
‘ jections in the contrary; which sum of 1000
‘ money foresaid, I the said *A. B.* by these
‘ presents, bind and oblige myself, and my
‘ heirs, executors and successors whatsoever
‘ (renouncing the benefit of discussing my
‘ heirs of whatever kind or priority) to re-
‘ pay to the said *C. D.* his heirs, executors or
‘ assignies, upon the 15th *May* next to come
‘ in the year 1765, with 200 *l. sterling* of li-
‘ quidate penalty in case of failzie, together
‘ also with the due and legal annual rent of the
‘ said principal sum, from the date of these
‘ presents, to the foresaid day of payment
‘ and yearly and proportionally in all time
‘ thereafter, during the not payment of the
‘ said principal sum. And I consent to the
‘ registration hereof in the books of council
‘ and session, or in any other judge’s book
‘ competent, to have the strength of a decree
‘ interponed thereto; that letters of horning
‘ upon six days charge, and all other execu-
‘ tion necessary, may be direct thereon in fore-

as effects; and to that effect, I constitute
 _____ my procurators, &c. In witness
 whereof, &c.'

Notandum, 1^{mo}, That since the act of
 parliament 1695, introducing the septennial
 prescription of cautionry, there are few or no
 bonds accepted by creditors, in which one per-
 son is bound as principal, and another as caution-
 er: But the modern method is, that the
 persons who concur as cautioners are intro-
 duced in the bond, and taken bound in the
 same words with the principal debtor, for
 whose behoof the money was borrowed; and
 the person thus bound, who is really no more
 than a cautioner, tho' as fully engaged to the
 creditor as the principal, gets a bond of re-
 lief, whereof the tenor falls next to be sub-
 joined.

2do, That in all bonds where more persons
 than one are bound, and where it is intended
 that each should stand engaged *in solidum*, the
 words, *conjunctly* and *severally*, are always to
 be introduced into the obligatory clause; o-
 therways, if that is neglected, each of the
 persons engaged, will be only liable singly or
 severally in proportion to their numbers; that
 is, if there are two obligants, each will be li-
 able for a half; if three, each for a third; and
 so forth.

3tio, That tho' the proper and natural
 narrative or onerous cause of a bond for lent
 money is to acknowledge, that it is instantly
 bor-

borrowed; yet, very often the bond may be justly due, and have a variety of other narratives without expressly bearing money instantly received; such as, by being the result of any transaction, the price of any goods or merchandize, land, or the like. And in these cases, either the plain fact is expressed as the cause of the deed, or otherways, writers commonly make use of these words as the inductive consideration of such bonds, 'Grant to be justly owing, &c. And the principal rule for writers to lay down for themselves is, to make the narrative of their deeds correspond with the *res gesta* as much as possible.

4^{to}, Where the creditor in the bond inclines to exclude his executors, it is to be done in this manner, *viz.* after the obligation to pay to the creditor and his heirs and assignies, these words are to be added: 'Excluding his executors, not only from the principal sum, but also from any annual rents or liquidate penalty, to be incurred by virtue of this bond.' And where the executors are thus excluded, the creditor's heir can make up a title to the bond by a general service, which may be done at a less charge in case of the creditor's death, than a confirmation can be ordinarily expedite before the commissaries.

5^{to}, Altho' it is the custom of writers to insert in all bonds, a penalty, under the name of liquidate expences, in case the debtor shall not pay precisely at the term of payment;

and

and that this penalty is now by custom commonly a fifth part of the principal sum; yet there is no law confining, not to make the penalty larger; and if the whole, however high, is *bona fide* laid out in recovering payment of the debt, the creditor is at as much freedom to exact it as the principal sum: But where that is not the case, and that only a part of the penalty is expended in raising and executing diligence, the creditor can demand no more than his real depursement; and if he is so wilful as to insist rigorously on the whole penalty, the debtor may apply to the lords of Session, by suspension of the debt, who, in all such cases, mitigate the penalty, by restricting it to the creditor's real charges.

A Bond of Relief.

I *A. B.* do hereby acknowledge that, albeit *C. D.* hath become bound conjunctly and severally with me in a bond, payable to *F. G.* for the sum of — upon the — next to come, with — of liquidate penalty in case of failzie, and annual-rent of the said principal sum, from the date of the said bond during the not payment: Yet, notwithstanding thereof, that the said sum of — borrowed from the said *F. G.* is wholly applied to my use, and no part thereof to the use of the said *C. D.* who
‘ became

' became only engaged therein to assist me
 ' with his credit, and upon exprefs conditi-
 ' tion, that I should relieve him thereof in
 ' manner underwritten; therefore I, by these
 ' presents, bind and oblige me, my heirs, ex-
 ' ecutors and successors whatsoever, to free
 ' and relieve the said *C. D.* his heirs and ex-
 ' ecutors of all payment of the foresaid prin-
 ' cipal sum of ——— annualrent thereof, from
 ' the date of the said bond, during the not pay-
 ' ment, and of the said sum of — of liquidate ex-
 ' pences, contained in, and due by virtue of the
 ' said bond, and of the said bond itself, and
 ' whole effect thereof, and of all damage, inter-
 ' rest or expences, which he may sustain or in-
 ' cur by his granting the said bond, any man-
 ' ner of way; and for that effect, at and a-
 ' gainst the said ——— next to come, either to
 ' make payment to the said *F. G.* of the fore-
 ' said principal sum of ——— and annualrent
 ' then due thereupon, and to retire from him
 ' the said bond, and to cancel the same at the
 ' sight of the said *C. D.* unregistred, or in
 ' case of registration, to obtain a proper dis-
 ' charge thereof; or otherways, in case I shall
 ' fail therein, in that event to make payment
 ' to the said *C. D.* himself, and to his heirs or
 ' executors, of the foresaid principal sum, and
 ' annualrent thereof, from this date, during
 ' the not payment, to the end he may apply
 ' the same for retiring the bond above menti-
 ' oned, and thereby operate his own relief,
 ' which

which I oblige me to perform, under the penalty of ————— to be paid by me to the said *C. D.* in case of failure, over and above performance. Registration for execution.'

Notandum, That if the bond of relief relate to the performance of an obligation, which the lawyers stile '*ad factum prestandum*;' such as the due execution of any trust, the proper discharge of office of tutory, or the like, and not the direct payment of a sum of money; in such cases, the bond of relief must be made to correspond with the engagement itself, and will not require the two last alternatives in the scroll prefixt, but still ought to contain a suitable penalty, so as the party out of that penalty may be reimbursed of his whole expence: And the benefit arising to a person possessor of a bond of relief, with the two alternatives, in terms of this scroll, is, that as the ground of the obligation becomes thereby reduced to a liquidate sum of money, the cautioner has it in his power to point the effects of the principal for operating his relief, without having advanced the contents of the bond to the principal.

If the creditor in a bond intends to make over the same to a third party; this is done by a writing, which is known in law by the name of an assignation, whereof the tenor follows.

An Assignment.

‘ I *A. B.* for an equivalent sum advanced and
 ‘ paid to me by *C. D.* (or for favour and
 ‘ affection, or such other considerations as real-
 ‘ ly occasion the assignment) do, by these
 ‘ presents, make, constitute and ordain the said
 ‘ *C. D.* his heirs, executors and assignies, my
 ‘ irrevocable cessioners and assignies, in and to
 ‘ the principal sum of ——— *sterling* money
 ‘ ——— of liquidate expences in case of fail-
 ‘ ure, and annualrent of the said principal
 ‘ sum, bygone and in time coming, during
 ‘ the not payment, contained in a bond granted
 ‘ to me by ——— dated ——— and
 ‘ in and to the said bond itself, whole force
 ‘ and effect thereof, and all that has follow-
 ‘ ed or may be competent to follow there-
 ‘ upon, surrogating and substituting the said
 ‘ *C. D.* and his foresaids, in my full right of
 ‘ the premisses for ever, with full power to
 ‘ him to ask, uplift and receive the sums of
 ‘ money, principal and annualrents thereof
 ‘ and liquidate expences hereby assigned; and
 ‘ if needful, to use all manner of legal dili-
 ‘ gence, real or personal, either in my name
 ‘ or his own, for recovery thereof; to
 ‘ compound, transact and agree thereanent;
 ‘ and, upon payment, to grant receipts and
 ‘ discharges, or conveyances; and general-

ly, to do every other thing in relation to the premisses, which I might have done myself, before the granting of this present assignation, which I bind and oblige myself, my heirs and executors, to warrant and defend to the said *C. D.* from all facts and deeds, done or to be done by me prejudicial hereto; and I have herewith delivered up to the said *C. D.* the foresaid principal bond, to be kept and used by him as his own proper evident in time coming. *Registration.*

Notandum, If it so happen, that the bond to be assigned has been registrate, or any further diligence, such as horning, inhibition or caption used upon it, in such cases, the diligence must be specially assigned, and then, perhaps it may be proper, in place of beginning the assignation with the assignative clause, to recite first the bond assigned, with the whole steps of diligence used upon it, and then to subsume upon the consideration for which the assignment is granted; and lastly, to proceed to the assigning clauses, and in such cases, the clause of delivery is to mention the giving up of the diligences; such as horning, inhibition, execution, and the like, as well as the bond itself.

2do, That in all assignations, the warrantice is only to be given by the granter, who is called in law the cedent, to the receiver, who is called in law the assigney, from the cedent's proper facts and deeds; the meaning of which is no more than this, that the ce-

dent will not counteract the conveyance, either by uplifting the money, or giving any second conveyance to any other person; but the cedent is not understood to be answerable that the debtor in the bond assigned is responsible; neither would this warrantice subject him in recourse to the assigney, if any inherent nullity in the bond assigned should afterwards appear; such as, that it was granted by a minor without the consent of his curators, or by a person interdicted without consent of his interdictors; and it is not usual for assignations to contain any other sort of warrantice, than what is heretofore mentioned; but if, by mistake of writers, or even the agreement of parties, absolute warrantice is insert in the body of the assignment, it imports no more, than that the bond assigned, is binding, formal and due by law, but not that the debtor in the bond is solvent; not that it is against law, for an assignee to stipulate, that in case the debtor in the bond shall prove unable to pay, he shall have recourse against the cedent; but if it is so understood or agreed betwixt the parties, there must be a special clause or obligation to that purpose, enlarging the warrantice, which may be conceived in the terms following, *viz.*
 ' I bind and oblige me, my heirs and executors, to warrant this assignation at all hands, and against all mortals.' That is to say, not only that the debt here assigned is justly due, but also that the debtor therein is, and shall be solvent

solvent at any time, when my said assigney shall think proper to call for the sums of money here assigned.

3thio, In order to compleat the assignation in the person of the assigney, so as to put the debtor of the bond *in mala fide* to pay to the cedent, it is necessary that the assignation be made known to the debtor, which is done by producing to him, in presence of a notary and witnesses, the assignation; and protesting, that the debtor is to pay to the assigney and to none other; upon which the notary extends an instrument, which is called an instrument of intimation; and this being done personally, or at the party's dwelling place, compleats the assignation; so that after this step, neither payment to the original creditor in the bond, nor any arrestment for his debts, or any other right from the cedent, can prejudice the assigney's right; but if the debtor in the bond assigned, happen to be out of the kingdom of *Scotland*, so as he can be neither found personally, nor at any proper dwelling place, the assigney's method of compleating his assignation, is done by (what is called) letters of supplement, which are expedited in the king's name under the signet, upon a bill or petition to the Lords of session, reciting the assignment, and giving a warrant to the messengers at arms to intimate the assignment to the absent party, at the market cross of *Edinburgh*, pier and shore of *Leith*, in presence of a notary and witnesses; and the messenger

executing these letters, gives an execution to the party under his hand; and also, the notary gives an instrument bearing the *res gesta*, which effectually in law compleats the assignment, as much as if the intimation had been made to the party personally, or at his dwelling place, if within the kingdom: And yet, as there are few general rules in law without some exceptions; so, if the debtor in the bond, really ignorant of the assignation, should, upon returning to the country, continue to pay annualrent to the original creditor in the bond; and that the assigney should never crave nor interpel him for a tract of years, it is believed that the judges might sustain such payments, tho' prejudicial to the assigney, because of his neglect, upon the maxim, *Vigilantibus, non dormientibus, jura subveniunt*. But, in this case, the debtor behoved to have an entire *bona fides* on his side, otherways he could not plead exemption upon payment to the cedent; and perhaps it would be an improvement worthy of attention, to prevent any questions or mistakes of this sort, that there were a register appointed for recording instruments of intimation upon letters of supplement, when the party is out of the kingdom, in some such manner as instruments of interruption of real rights, edictal citation in process of sale, or the like.

As an assigney is at freedom to make over the debt assigned to him to a third party,

the deed is termed a translation, of which the tenor follows.

A Translation.

BE it known to all men by these presents, me *Titius*, forasmuch as *Mevius*, by his bond, dated ——— became bound to pay to *Sempronius*, upon the ——— the sum of 100 *l. Sterling* money, with a fifth part more of expences in case of failzie, and annualrent of the said principal sum, during the not payment, after the said term of payment; to which bond and sums of money thereby due, I have right from the said *Sempronius* by assignation, dated ——— duly intimated to the said *Mevius* upon the ——— conform to an instrument of intimation, under the hand of ——— notary publick, as in the said bond, assignation thereof, and instrument of intimation at more length is contained: And now seeing *Caius* has made payment to me of an equivalent sum for my granting hereof; therefore I, by these presents, as having right in manner above mentioned, assign and transfer to, and in favours of the said *Caius*, his heirs, executors and assignies, the foresaid principal sum of 100 *l. Sterling*, with a fifth part more of liquidate expences, and annualrent of the said principal sum bygone, since ——— and
in

' in time coming, during the not payment, con-
 ' tained in, and due by virtue of the bond a-
 ' bove narrated; together with the said bond
 ' itself, and my right thereto, and instrument
 ' of intimation thereof; surrogating and sub-
 ' stituting the said *Caius* in my full right and
 ' place of the premises hereby transferred,
 ' for ever, with full power to the said *Caius*
 ' and his forefaids, to uplift and receive the
 ' sums of money, principal, annualrents there-
 ' of, and liquidate expences above transfer-
 ' red, and to dispose thereupon at his or their
 ' pleasure, and, if needful, to sue all manner
 ' of legal diligente, real or personal, for re-
 ' covery thereof, and to compound, transact
 ' and agree thereanent, receipts and discharges
 ' thereof to grant conveyances of the same to
 ' third parties to make, which shall be sufficient
 ' to the receivers; and generally, to do every o-
 ' ther thing concerning the bond hereby trans-
 ' ferred, which I might have done myself before
 ' the making and granting of this translation,
 ' which I bind and oblige me, my heirs and ex-
 ' ecutors, to warrant to the said *Caius* and his
 ' forefaids, from all facts and deeds done by
 ' *Sempronius* my cedent, or done or to be done
 ' by me in prejudice hereof; and I have here-
 ' with delivered up to the said *Caius*, the
 ' foresaid principal bond, assignation thereof
 ' in my favours, and instrument of intimation

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taken thereon, to be kept and used by him and his forefathers, as their proper evidents in time coming; and for the more security, I consent to the registration, &c.'

Notandum, imo, That in all assignments, transactions and similar deeds, whereof the principal design is to make over any right or subjects standing in the person of the granter, the clause of registration is chiefly meant for preservation only, so as to secure against accidental losses of the writing: But wherever there is an obligatory clause in the deed, such as warrandice, or the like, it is proper that there also be subjoined in the clause of registration, an expression allowing the party in whose favours the writing is granted, to take a decret of registration upon it, in order to procure summary diligence, in case the obligatory part shall be counteracted. Thus in assignments and translations, the clause of registration is usually conceived in the following form, *viz.* ' And for the more security, I consent to the registration hereof in the books of council and session, or any other judge's books competent, therein to remain for preservation; and, if needful, to have the strength of a decret interponed thereto, that letters of horning, and all other necessary execution may be direct hereon in form as effects: And to that end, I constitute ——— my procurators, &c.'

2do, That

2dò, That in this clause of registration, where no special number of days are mentioned, (which depends on the agreement of parties) on which diligence may proceed, in all such cases, the horning or sheriff's precept following on the decret of registration, goes upon a charge of 15 days, which, by constant custom, is the legal meaning of the words in form as effeirs.

3tio, That translations, and all subsequent conveyances of bonds, or other personal subjects, in order to their final completion, must be intimated to the original debtor in the bond, or other subject conveyed, in the same way as is directed in the case of the first assignation, for putting the debtor in *mala fide* to pay to any other than the holder of the translation, as well as to prevent the effect of any arrestment of the subject for the debt of the granter of the translation.

4to, That in case a part only of the principal sum in a bond, is assigned or transferred the assigning clause will run in the following terms, viz. ' In and to the sum of 50 l. Sterling only, resting of the principal sum of 100 l. Sterling, contained in a bond, dated ——— granted to me by ——— and in and to a proportional part of 20 l. money foresaid of liquidate expences, incurred thro' failzie; and in and to the annualrent of the remaining sum of 50 l. from *Whitsunday* last and in time coming, during the not payment

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and in and to the said bond itself, in so far as concerns, or may be extended to the sums hereby conveyed.'

But if there happen to be several partial payments made of the bond which is to be assigned, and that the creditor does not remember what these payments are, the assignation falls to be conceived in definitive terms; such as these following, *viz.* 'In and to the sum of 100 *l. Sterling* of principal, in so far as the same is resting, owing and unpaid, contained in a bond granted to me by — and in and to the whole annualrents due thereon, bygone, as well as in time coming.' And in such a case, in the clause of warrandice, it is fit, that the cedent except from the warrandice of this assignation, all partial payments by receipts thereof granted by the cedent or any in his name to the debtor, prior to the date thereof, that is, of the assignation.

5^{to}, Where assignations or translations are granted for love and favour, which in law is called a *lucrative cause*, in contradiction to a bargain betwixt the parties, which proceeds for an equivalent sum, or equal value paid by the assigney to the cedent, which is called in law an *onerous cause*, there is no occasion for any clause of warrandice; nor is it usual to adject one, because being a pure donation or gift, the meaning of the granter can only be to make over the bond, subject to every drawback, disadvantage or inconveniency, (whatever

ver they may be) which might arise from any anterior deed of his own.

Bonds being thus executed or constituted, agreeable to the form before prescribed, or in some such similar terms, will, it is thought, answer the end for which they were intended. The next supposal is, that the debtor shall make payment to the creditor, which puts an end to the bond or obligation, and then it is reasonable, that the debtor should have a deed under the creditor's hand, acknowledging the receipt of the money, and liberating him from the obligation to pay, which is called a discharge, and may be conceived in the following form.

A Discharge.

‘ **I** *A. B.* of ——— grant me to have received
 ‘ from *C. D.* of ——— the principal sum of
 ‘ 100 *l. Sterling*, with the annualrent thereof,
 ‘ from ——— to this date, contained in and due
 ‘ by virtue of a bond granted by him to me,
 ‘ dated ——— and bearing 20 *l. Sterling* of liqui-
 ‘ date expences in case of failzie; and therefore
 ‘ I, by these presents, exoner and discharge
 ‘ the said *C. D.* his heirs and executors, of the
 ‘ foresaid principal sum of 100 *l. Sterling*,
 ‘ whole annualrents thereof, bygone and in
 ‘ time coming, and of the said sum of 20 *l.*
 ‘ money foresaid of liquidate expences, due by
 ‘ the said bond, and of the said bond itself, and
 ‘ of

of all that may be competent to follow thereupon; and I bind and oblige me, my heirs and executors, to warrant this present discharge to the said *C. D.* and his forefairs, at all hands, and against every mortal; and I have herewith delivered up to the said *C. D.* the foresaid principal bond to be destroyed. Registration for preservation, and diligence in common form.'

Notandum, 1mo, If the bond happen to have been registrate, and other diligence to have been done on it, then it is necessary, that this be noticed, both in the recital, and also in the discharging part, and likewise in the diligence to be given up to the party, so as that no vestige of the obligation may remain in the hands or custody of the creditor, which might be the source of future disturbance to the debtor, who has fairly paid the bond; for, when this is not duly adverted to, and that either the extract of the bond, or any step of diligence, such as horning, caption or inhibition, is left in the hands of the creditor, the same, upon his death, being found in his custody, may create an apprehension in his executors, or in the tutors of his children, that the debt has not been paid, and so create fresh trouble to the debtor in the bond, who, if he has lost by accident the discharge, may be obliged to pay the debt over again.

2do, That where the original bond is not registrate, and so can be given up, it is sufficient

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for

for the debtor's security, that the receipt or discharge of the money be on the back of the bond, and referring to it, almost in as simple terms as the receipt on the back of a bill: But an acknowledgment of some sort or other of the payment, will always be required by every prudent man, even though he gets up his bond, because it prevents the possibility of an allegation on the part of the creditor, that the bond went out of his hands by some accident or other than upon payment, whereby he might still make a handle to disturb the debtor, who having once implemented his bond, ought to put it as much as practicable, out of the power of his creditor to give him further disturbance anent it.

3tio, When the bond happens to have been assigned or transferred, and is to be discharged by the assigney to the transferee, the form of a discharge falls to be more tedious and ample; because all the conveyances, how many soever, fall to be recited in their order, till the title is fixed in the person who is immediately to grant the discharge; and the following form will answer such a case, viz.

Discharge by an Assigney.

‘ **B**E it known to all men by these presents,
 ‘ me *A.* forasmuch as *B.* by his bond,
 ‘ dated ——— became bound to pay to *D.*
 ‘ at the term of *Whitsunday* ——— the prin-
 ‘ cipal

' cipal sum of ——— *Sterling* money, with
 ' ——— money foresaid of liquidate expen-
 ' ces in case of failzie, with annualrent for
 ' the said principal sum, from the date of the
 ' said bond, to the foresaid term of payment,
 ' and in all time thereafter, during the not
 ' payment thereof, which bond was registrate
 ' in the books of council and session, on the
 ' ——— day of ——— whereupon the said
 ' *D.* raised letters of horning at his instance,
 ' against the said *B.* which are dated and sig-
 ' neted upon ——— and were duly executed
 ' against the said *B.* and registrate; as also,
 ' the said *D.* raised letters of caption there-
 ' upon, and likeways letters of inhibition,
 ' which are dated and signeted ——— and
 ' execute against the said *B.* and the lieges,
 ' and duly registrate in the general register of
 ' hornings, on the ——— day of ———
 ' To which bond, and whole diligence above
 ' recited and used thereupon, *E.* acquired right
 ' from the said *D.* conform to his assignation
 ' thereof in his favours, dated ——— and
 ' also, the said *E.* by his translation of the date
 ' ——— transferred the foresaid bond, and
 ' sums therein contained, and whole diligence
 ' aforesaid, used thereupon, to and in favours
 ' of *F.* who by his translation and conveyance
 ' thereof, dated ——— made over and trans-
 ' ferred the same to me, as in the bond, di-
 ' ligence and conveyances above narrated, at
 ' more length is set forth; and now seeing the
 ' said *B.* hath made payment to me of the fore-

* said principal sum of — *Sterling* money, and
 * of the whole annualrents thereof due since
 * the date of the said bond, to the date here-
 * of, with the sum of ——— *Sterling*, as the
 * expences laid out by me and my cedent's
 * authors, in registering the said bond, and
 * raising and executing the foresaid legal dili-
 * gence, whereof I hereby acknowledge the
 * receipt; therefore, wit ye me, as having
 * right in manner before recited, to have ex-
 * onered and discharged, as I, by these pre-
 * sents, exoner and discharge the said B. his
 * heirs and executors, of the said principal
 * sum of ——— *Sterling* money, ——— money
 * foresaid of liquidate expences incurred thro'
 * failzie, and whole annualrents of the said
 * principal sum, since the date of the said bond,
 * and in time coming, and of the said bond it-
 * self, and whole strength or effect thereof,
 * and of the decret of registration interpo-
 * ned thereto, and of the letters of horning,
 * caption and inhibition raised thereupon, and
 * of the executions, indorsations and registra-
 * tions of the said letters, and of all further
 * diligence or execution competent upon the
 * premisses, and of all that has followed or
 * may follow thereupon; and I bind and ob-
 * lige me, my heirs and executors, to warrant
 * and maintain this present discharge to the
 * said B. at all hands, and against all mortals;
 * and I have herewith delivered up to him,
 * an extract of the said bond, with the said
 * letters.

‘ letters of horning, caption and inhibition,
 ‘ raised at the instance of the said *D.* there-
 ‘ on, with the assignation of the premisses by
 ‘ the said *D.* to *C.* and the foresaid translation
 ‘ by the said *E.* to me, to be cancelled, or other-
 ‘ ways used or disposed of by the said *B.* at his
 ‘ pleasure. Registration for preservation, and
 ‘ diligence in form as effects.’

Notandum, 1mo; It is to be observed, that
 tho’ a party transferring a bond makes over
 his own title to the assigney; yet, when that
 assigney comes to discharge the debt, he does
 not discharge the assignation, tho’ he recites
 it in the narrative of the writing; and the di-
 ligence in this form arises from the nature of
 the thing, because, should he discharge his
 title, it would be to cut the branch upon which
 he himself stood, which would be an impro-
 priety.

2do, That wherever the bond is registrate,
 it would be very prudent in the debtor to re-
 cord his discharge also, and to cause mark it
 on the margin of the register, opposite to the
 said bond, lest the discharge should fall by,
 and then a second extract of the bond may be
 taken out by the creditor, and the debtor
 by this means put to fresh trouble.

Where a bond is granted by a variety of
 different persons, all bound conjunctly and se-
 verally, it commonly happens, that one or
 other of these persons gets the full use of the
 money borrowed; and so all the rest, being

cautioners for him, get bonds of relief from that person. It may be also here observed, that when more persons than one are bound in a bond, suppose none of them is bound specially to relieve the other, the law gives each of them equal relief against the rest *pro rata*, or proportionally to their numbers; and in either of such cases, as the creditor in the bond has the whole bound to him, he may call for his money from any one he chuses. In which case, upon payment, besides a discharge to the person who pays, he is also obliged to assign the debt to him, in order to operate his relief. The form of a discharge and assignation follows.

Discharge and Assignation.

‘ **K** Now all men by these presents, me, F.
 ‘ forasmuch as *A. B. C.* and *D.* by their
 ‘ bond, &c. (*Here narrate the bond and*
 ‘ *diligence*) and now seeing the said *A.* hath
 ‘ made payment to me of the said principal
 ‘ sum of ————— *Sterling*, with
 ‘ the bygone interest resting thereon, from
 ‘ the date of the said bond, and the sum of
 ‘ ——— *Sterling* of expences, depursed by me
 ‘ in raising and executing the foresaid legal
 ‘ diligence, of all which amounting in whole
 ‘ to the sum of ——— *Sterling*, I hereby acknowledge
 ‘ the receipt; therefore, wit ye
 ‘ me

me not only to have exonerated and discharged, as I, by these presents, exoner and discharge the said *A.* his heirs and executors, of the foresaid principal sum of — *l.* *Sterling*, and of — money foresaid of liquidate expences, together with the interest of the said principal sum, bygone, from the date of the said bond, and in time coming, and of the said bond itself; decreet of registration interponed thereto, and letters of horning, caption and inhibition raised thereupon; executions, indorsations and registrations thereof, with all that hath followed or may be competent to follow thereon: But also, to the end the said *A.* may operate his full relief, not only from the said *B.* (from whom he has a bond of relief of the said debt, bearing date — produced to me at the granting hereof,) but likewise, that he may operate his proportional relief against the said *C.* and *D.* who stand bound jointly with him as aforesaid; therefore, to have made and constituted, as I, by these presents, make and constitute the said *A.* his heirs, executors or assignies, my irrevocable cessioners and assignies, in and to the said principal sum of — *Sterling*, — of liquidate expences, and interest of the said principal sum, from the date of the said bond, and in time coming, during the not payment, with the said bond itself, decreet of registration interponed thereto, and letters
 of

* of horning, caption and inhibition raised
 * thereupon, with all that has followed or
 * may follow thereon; surrogating and substituting the said *A.* in my full right, title and place of the premisses for ever, with full power to the said *A.* to uplift, receive, &c. (as in the preceeding scroll.)

Notandum, 1mo, In such cases as this, the warrantice of the discharge is to be absolute that is, 'at all hands.' But the warrantice of the assignation is only to be personal; that is from the 'granter's facts and deeds.'

2do, It is to be remembred, that by the operation of the law, whatever interest or expence incurred upon a bond, is paid to the creditor by one who has a bond of relief, that interest and expence falls to be converted into a principal sum, in favours of the person who paid the debt, against the debtor in relief; and this holds also *quoad* all co-principals who owe proportional relief to one another supposing no particular bond of relief is granted by any one of the obligants to the other and suppose six persons in a bond bound, and that five of them have bonds of relief from the sixth obligant, but that the other five have given no particular bonds of relief to free one another, *pro rata*, the law in this case gives proportional relief to any one of the five paying the debt, against the other four and he may attach any one of the four to reimburse the one half of what he has been

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obliged to pay to the principal creditor; and when this happens, he must make over the one half of the debt to that person, being one of the four from whom he has exacted the one half: But as in this case, each of these two, who are become thus joint creditors in the debt, have a right to ask from the other four proportionally, since the first payer is not fully relieved by his drawing the one half of the sum; therefore, what the first assignee is bound to do in this case, in favours of that co-obligant, who has paid him the one half of the debt, is, to assume him a partner in the right, and to assign and transfer to himself, and the fourth person paying jointly, the whole debt, to the end they may operate their relief proportionally, from all the other obligants; and also, to the end each of them may operate their full relief from the sixth person, who gave them all bonds of relief, and so the transaction is to go on, till every one of the five has paid his proportion, in case they all remain solvent, and until they are fully relieved by the sixth person, who is supposed the ultimate debtor; and as all the five are in effect cautioners for one another, *quoad* one fifth of the debt; so whatever interest or expences any of these co-obligants pays for the rest beyond his own proper fifth share, he may warrantably, or by law charge annual rent upon that interest and expence.

3^{to}, That

3^{to}, That this is a fixed rule in law, that all cautioners whatsoever, who are distressed and obliged to pay upon being bound with or for another, are intitled, in consequence of their right of relief, to interest on whatever they pay, from the date of the advance, whether the sum paid yield annualrent to the original creditor or not; and so the obligation of relief extends to produce interest in favours of the distressed cautioner, upon expences or bygone annualrents, merchants accompts, and the like; and the same thing holds as to cautioners in suspensions, cautioners for factors for tutors and curators, for executors in confirmed testaments, or the like.

4^{to}, That altho' the law only allows the relief to cautioners who are supposed to be distressed for the debt, and not to those who pay the same voluntarily without any legal compulsitor; yet, where the debtor *diu habet seriat in mora*, that is looked upon as equal to distress, or when he is *vergens ad inopiam*. If the debtor in a bond decline making payment of the debt to the creditor or his assigney, the next thing which falls to be considered is, what compulsitor the law gives to the creditor, in order to force the payment; and in such case, the creditor either registrates the bond, where it bears a clause of registration and obtains a decret of registration interposed to it, or if it bears no clause of registration, or that the debtor himself is dead, and

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he payment only to be expected from his heirs, then, upon a summons given to the party, he obtains a decret ordaining him to pay, before the Lords of session, or other competent judge; and this decret, whether it be a decret of registration, or a decret upon citation, in common contradistinction, is called a decret *in foro*; either of these is a sufficient warrant for the creditor to obtain letters of horning and poinding, which are the first step of legal distress, against the debtor; and of which letters the tenor follows.

Horning.

GEORGE, by the grace of GOD, king of Great Britain, France and Ireland, defender of the faith, to messengers at arms, Our sheriffs in that part, jointly and severally, specially constitute, greeting, Forasmuch as *A.* by his bond, bearing date — bound and obliged himself to pay to Our lovite *B.* the sum of 100 *l. Sterling*, at the term of — with 20 *l.* money foresaid, of liquidate expences in case of failzie, and the due and legal annualrent of the said principal sum, from the date of the said bond, to the foresaid term of payment, and thereafter, during the not payment, as the said bond, insert and registrate in the books of Our council and session, and having a decret of Our Lords thereof inter-

‘ poned

'poned thereto, upon the day and date of
 these presents, ordaining these Our letters
 to be direct thereon, in manner underwrit-
 ten, more fully propoerts. *Our will is there-
 fore*, and We charge you strictly, and com-
 mand, that immediately, after sight of these
 Our letters, ye pass, and in Our name and
 authority, command and charge the said *A.*
 personally, or at his dwelling place, to make
 payment to the said *B.* of the foresaid prin-
 cipal sum of 100 *l. Sterling*, 20 *l. money*
 foresaid of liquidate expences, incurred thro'
 failzie, with annualrent of the said principal
 sum, from the day and date of the said bond
 and in time coming, during the not payment
 thereof, after the form and tenor of the said
 bond, and decret of registration interponed
 thereto, in all points; and that, within six days
 next after he shall be charged by you there-
 to, under the pain of rebellion, and put-
 ting of him to the horn; wherein if the
 said *A.* fail, the said space being bypast
 that immediately thereafter, ye denounce
 him rebel, and put him to the horn, and
 use the hail remanent order against him
 prescribed by law: And siklike, that ye in
 Our name and authority afore said, arrest
 apprise, compel, poind and distrenzie all
 and sundry, the said *A.* his readiest moveable
 goods and gear; corns, cattle, horse, nolt
 sheep, and other outfight and insight plenish-
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ing, mails, farms and duties of lands and heritages, debts, sums of money, and all other moveable means and effects whatever, pertaining and belonging to him, wherever, or in whose hands soever the same may or can be apprehended, make penny thereof, to the avail and quantity of the foresaid principal sum, annualrents thereof, and liquidate expences; and make the said *B.* compleatly satisfied and paid thereof, after the the form and tenor foresaid, in all points, according to justice, as ye will answer to Us thereupon. The which to do, we commit to you, and each of you, jointly and severally, Our full power, by these Our letters, delivering them by you duly execute and indorsed again to the bearer. Given under Our signet at *Edinburgh*, the — day of — and of Our reign the — year —
Per decretum dominorum concilii.

Notandum, 1mo, These letters of horning being subscribed by a writer to the signet, whose proper business it is to issue such diligences, he carries it to the king's signet, of which there is always a proper keeper appointed, and the king's seal, (known now by the name of the signet) is affixed thereto by the keeper, who adjects the particular date on which the signet was affixed, that is, the day of the month and year in figures, and then the letters of horning are compleat, and ready to be put in execution.

X x

2do, That

2^{do}, That before the year 1718, the date of appending the signet was ordained to be set down in writing at length; but upon an application by the keeper at that time, the Lords of session, by an act of sederunt, or deliverance on a representation given in to them by the keeper, allowed the date of the signet to be insert in figures.

3^{tio}, That by an act of parliament in the year 1748, the effect of a denunciation upon letters of horning, so far as it operated to escheat the debtor's effects, was totally abolished; and therefore, since that time, the clause ordaining the debtor's moveable effects to be escheated and in-brought to his Majesty's use, is not, nor ought not to be insert in the hornings.

4^{to}, That altho' by the foregoing stile of a horning, the warrant to the messenger to arrest and point the debtor's effects, are both conceived in the same terms, and without any difference in point of time, for the messenger's putting these two compulsitors in execution; yet this is explained by practice, so as that the messenger may warrantably arrest the debtor's effects, even before, or without giving him a charge of horning personally, or at his dwelling place; but he cannot warrantably point his effects, till he has not only given the debtor a charge, but that the days of that charge are also elapsed; and the reason may be supposed to be this, that the arrestment only secures a-

gainst

gainst the debtor's putting his effects out of the way, in prejudice of his creditor, whereas the act of poinding transfers the property of the effects poinded, from the debtor to the creditor; and this being a stronger step of distress, the law and practice seem to have thought it reasonable not to admit of its being taken, till the debtor had showed himself contumacious, in disobeying the charge of the king's letters, which the law presumes he would not venture to transgress.

5to, That where the bond or obligation (which must always be registrate before the letters of horning can be raised) bears any precise number of days, on which horning is to pass, for example, as six, eight or ten; in these cases, the writer to the signet in this horning, is to make that the rule of charging the party, and appoint him to be denounced if he fails in that conventional time; but if the bond bear a consent for registration and horning, without mentioning any number of days, in such cases, the uniform practice has fixed the charge to be given on fifteen, which all writers follow, except where particular statutes have declared otherways; such as charges of horning to superiors to enter adjudgers, which are to be given on 21 days; charges against persons residing in *Orkney* or *Zetland*, which are to be on 40 days, and the like.

6to, That though originally, letters of horning did only proceed on decreets of the Lords of session, or bonds or obligations registered

gistrate in their books; yet, by several acts of parliament, particularly in the reign of king *James VI.* for the ease and conveniency of the lieges, they are warranted to be given by deliverance of the Lords of session, upon decreets of most inferior courts; such as sheriffs, commissaries, baillies of regalities and burrows, and these always proceed upon a charge of 15 days; but there is no authority by any law, for raising hornings upon the decreets either of justices of the peace, or baron baillies, and the reason why the statute has not extended the privilege of hornings, for forcing obedience to the decreets of justices of the peace, and baron baillies, seems to be this, that their powers being confined to petty matters, such as small riots, servants fees, breaches in good neighbourhood, and other such petty affairs; and the certification of a horning being no less than the forfeiture of the disobedient person's whole moveable effects; this might be supposed too severe a punishment to inflict, for not obtempering these lesser sentences, which the justices of peace have power to enforce, by confining the person of the delinquent, till he gives obedience, and the baron baillie can have his sentence enforced by poinding.

7mo, That where the person against whom the horning is raised, happens to be out of the kingdom, in such case, the horning must always proceed upon a bill, craving a warrant against the party, to be executed at the mar-

ket

ket cross of *Edinburgh*, pier and shore of *Lieth*, and upon sixty days, even tho' the horning proceed on a registrate bond bearing any lesser number of days. The debtor being thus charged with horning by a messenger, and proving disobedient, the next step to be taken by the messenger in execution of his office, is, to go to the market cross of the head burgh of the shire, where the debtor has his residence, and there, after three blasts of a horn, for warning the lieges to attend and hear what is passing, the messenger declares the person charged, the king's rebel, or, in the words of the letters, puts him to the horn, which is called a denunciation; after which, of old, the party denounced was no longer to be considered as the king's free subject; but all his effects were liable to be seized for the use of the publick; and the denunciation producing such severe effects, it was judged reasonable, that the same should be made publick, by registering of the horning, and of the executions, both of the charge and denunciation, within fifteen days after the date of the last, otherways, that the execution of denunciation should be void; and so it was enacted by statute, *James VI. par. 6th, act 75th*, in which the particular form wherein these registers are to be kept, is specially set down.

The horning being thus execute, denounced and registred, and the person thereby in the sense of law become the king's rebel, by

disobeying his commands, the law deprived him of all liberty of his own person, and allowed him to be seized and thrown into prison, which is done by letters of caption issued in the king's name, and under his signet, for apprehending the person of the rebel, whereof the tenor follows, *viz.*

Caption.

‘ **G**EORGE, &c. (*as in the horning*) For-
 ‘ asinuchas it is humbly meant and
 ‘ shown to Us by Our lovite, A. That where
 ‘ upon the of last by-
 ‘ past, B. was duly and orderly denounced
 ‘ rebel, and put to the horn by virtue of let-
 ‘ ters of horning, raised and executed at the
 ‘ instance of the said A. for not payment mak-
 ‘ king to him of the principal sum of 100 l.
 ‘ Sterling, 20 l. money foresaid of liquidate
 ‘ expences incurred through failzie, and by-
 ‘ gone interest of the said principal sum con-
 ‘ tained in a bond dated ——— granted by
 ‘ the said B. to the said A. registrate in the
 ‘ books of council and session upon ——— and
 ‘ having a decret of the Lords thereof in-
 ‘ terponed thereto, whereupon the said let-
 ‘ ters of horning proceeded, as the same,
 ‘ with the executions thereof duly registrate
 ‘ in the sheriff court books of ——— shown to
 ‘ the Lords of Our council and session, have
 ‘ testified; under which process of horning,
 ‘ the

the said *B.* hath continually lyen and abid-
 den; and yet, notwithstanding thereof, haunts,
 resorts to, and frequents kirk and market,
 and other publick and private places and com-
 panies, as if he were Our free liege, and no
 such process of horning had been led or
 deduced against him, in high contempt of
 Us, Our authority and laws, and an evil ex-
 ample to others to commit the like in time
 coming, unless remeid be thereto provided,
 as is alledged. *Our will is therefore,* and
 We charge you strictly, and command, that
 immediately on sight hereof, ye pass, and
 in Our name and authority, command and
 charge the sheriffs of the sheriffdoms of —
 ——— stewards of the stewartries of ———
 the provost and baillies of the burrows of
 ——— and all their deputes; and also,
 messengers at arms, Our sheriffs in that part
 foresaid, conjunctly and severally, to pass,
 seek, search for, take and apprehend the
 person of the said *B.* rebel foresaid, where-
 ver he can be found within the bounds of
 their respective jurisdictions; and being so
 apprehended, to put him in sure ward, firm-
 ance and captivity within their tolbooths,
 and others their warding places, keep, hold
 and detain him therein, upon his own pro-
 per charges and expences, ay and until he
 hath fulfilled and obeyed the charge of the
 said letters of horning, and be orderly re-
 lieved from the process of horning therein
 contain-

“ contained, by payment making of the sum
 “ of money therein mentioned; and for that
 “ effect, if need be, that ye make shut and
 “ lock-fast houses, gates and doors, open and
 “ patent, and use Our keys thereto, within
 “ three days next after they be charged by
 “ you thereto, under the pain of rebellion,
 “ and putting of them to the horn, wherein if
 “ they fail, the said space being past, Our other
 “ letters shall be directed, charging them *se-*
 “ *pliciter*; and if these Our letters be put to
 “ execution within Our burgh of *Edinburgh*,
 “ that the concurrence of the magistrates be
 “ craved and obtained thereto, according to
 “ justice, because the Lords have seen the re-
 “ gistrate horning above mentioned, as ye will
 “ answer to Us thereupon: The which to do
 “ We commit to you, jointly and severally,
 “ Our full power, by these Our letters, deli-
 “ vering them by you duly executed and in-
 “ dorfed again to the bearer. Given under
 “ Our signet at *Edinburgh*, the — day of
 “ ——— and of Our reign the — year
 “ ——— *Ex deliberatione dominorum concilio*

Notandum, imo, That letters of caption
 must always proceed upon a deliverance, or
 warrant upon the back of a bill or petition to
 the Lords.

2do, It is incumbent as well upon the writ-
 ter to the signet who expedes these letters, as
 the clerks of the bills, to advert, that the
 horning

horning be duly executed, denounced and registered, on which the caption proceeds; that is to say, that the horning be duly executed against the party, and the execution subscribed by two witnesses, as well as the messenger, and that the denunciation bear date within year and day of that execution, and that the horning be registered within fifteen days after that denunciation; for, if the horning is defective in any one of these particulars, the caption cannot warrantably be expedited.

3th, After a caption is thus raised and executed, the person of the debtor apprehended and delivered over to a magistrate of any borough, if the magistrate either decline, without a just and necessary cause, to put the debtor in prison, or that afterwards the debtor escape therefrom, either through the insufficiency of the prison, or the fault of the keeper, for whose behaviour the magistrates are answerable, then the magistrates are by law liable to the creditor for payment of the debt, and for which a process may be brought against them.

4th, After the debtor is confined to prison, tho' by the will of the letters he is there to remain upon his own charges till he give obedience by payment of the debt; yet, the principles of compassion so far mitigate the severity of the law, that by the act 21st, par. 6th of king *William*, it is ordained, that where the prisoner complains to the magistrate, that
he

he is so poor, that he is not able to maintain himself, and makes faith thereon, the magistrate, upon intimation given to the incarcerating creditor, is authoris'd to oblige such creditor to settle an aliment for the prisoner's maintenance, at the discretion of the magistrate, not under three pence *per diem*, and by common practice, it never exceeds one shilling *Sterling*; which aliment if the creditor neglect to consign and pay regularly, the magistrate is at freedom to set the indigent prisoner at liberty without any hazard; and this is called *the benefit of the act of grace*; and the debtor being once liberate in this manner, the creditor cannot warrantably imprison him for the same debt, upon the same diligence.

5to, Every messenger, when he goes to execute a caption, ought to have a blazon, as the badge of his office, displayed on his breast, together with a rod or wand, which are the proper distinguishing marks of his office.

The blazon and wand are given him when he receives his commission from the lord lyon, and the blazon has the king's arms stamped or impressed upon it; and from thence it is, they are called messengers at arms; for they are in no other respect esteem'd military, but civil officers. The rod or wand is of a particular shape, and the use of it is, that the messenger may thereby touch the person against whom the caption is

raised,

raised, who is supposed to know this rod, and bound to submit to it, under the pain of being liable in deforcement.

6to, When a person is duly apprehended, the messenger, agreeable to the will of the letters, is bound to incarcerate him in the next sure prison, and neither the messenger, nor the creditor his employer, have it in their power or choice, at their pleasure to carry him to one more remote, unless it were for very special considerations; such as, the insufficiency of the next prison, or the like: For, should the messenger take upon himself wantonly to take the debtor to a very distant prison, he might be pursued and punished for oppression before the Lords of session, unless he should produce an express order in writing from the creditor for so doing, which might perhaps liberate the messenger, but would subject the creditor in the same penalty.

7mo, That altho' by the stile of the letters of caption, messengers are directed to charge magistrates of burrows, sheriffs of shires, and other inferior judges to seize and apprehend the rebel; yet, by the constant and uniform practice, the messenger always apprehends the rebel himself, and only now and then, upon particular occasions calls for or requires the aid of these inferior judges, which they are bound to adhibit under the penalty of being liable for the debt, unless they can qualify some rational excuse to justify their refusal: And the reason why the will of the letters

was

was antiently so conceived, is, that when the country was less civilized than it is now, it was matter of much greater difficulty to apprehend persons denounced, who very often gave resistance; so that it required the aid of magistrates and persons of greater authority than common messengers, to prevent tumults and disorders on such occasions.

The next thing that falls to be considered is, how a party is to behave who is charged with horning, or has other diligence raised against him for payment of a debt, against which he has defences, objections or exceptions sufficient to screen him from payment or performance of the obligation charged on, in whole, or in part; and, in such cases, the remedy of the party aggrieved is, to apply to the Lords of council and session by a bill of suspension, which when past and expedited, is termed *letters of suspension*.

These letters are drawn up by the writers, and pass the signet, and proceed by warrants, or *Ex deliberatione dominorum concilii*, in the same manner that the letters of horning do, which commonly give rise to them.

The bills upon which these letters pass, represent to the Lords, that the party is wrongfully charged, and subsume upon the reasons for so saying, which are as various as there may be just objections or exceptions against any debt once contracted; such as payment, compensation, *pluris petitio*, and the like: But

the party presenting such a bill, ought always to bring along with him, and produce before the judge, the verification or instruction of his allegation in writing, as he is bound to verify all his allegations instantly, or at least, refer them to his party's oath, which, by modern practice, is held to be equal to a written instruction, in order to obtain a suspension; and herein lies the difference in law betwixt a suspension, and a process of reduction for setting aside the debt totally, tho' the last very often accompanies the first, *viz.* That in all suspensions, the reasons ought to be verified immediately to the judge, whereas in a reduction of the ground of debt, by way of process, distant times and terms will be allowed for proving the reasons of reduction; and the ground of difference lies in this, that as no diligence can proceed, such as horning, caption, or the like, without the warrant or authority of a judge, so the law presumes, that this authority is not sought for, or at least not granted wantonly, but that *omnia sunt sollemniter acta*; and therefore, that so much respect is due to diligence once obtained in the king's name, that the effect and execution of it ought not to be stopt upon loose and vague allegations; and it is perhaps one of the greatest abuses that has of late crept into the practice of the law, that writers are so ready to present, and judges to pass bills of suspension, upon irrelevant and frivolous reasons; and the only

excuse that seems to be made for this, is, that the person raising the letters, who is called the charger, gets an additional security upon the expeding of letters of suspension, by the party obtainer his being obliged to find caution, not only for the payment of the debt on which the diligence is raised, but also such further damage or expence as the judges may modify at discussing the reasons, in case of wrongous suspending. The stile of this bond of caution has been improved by several acts of federunt, and runs thus ;

I *A.* do, by these presents, bind and oblige me, my heirs and executors, as cautioner and surety, enacted in the books of council and session for *B.* that he shall make payment to *C.* his heirs, executors or assignies, or to such person to whom payment shall be found due by the court of session, of the principal sum of ——— *Scots* money, ——— money foresaid of liquidate penalty, and annualrent of the said principal sum bygone, and in time coming, contained in a bond alleged to have been granted by the said *B.* to the said *C.* whereupon the said *C.* has raised letters of horning, and caused charge the said *B.* in case it shall be found at discussing of the letters of suspension, now intended to be raised of the said charge, that the said *B.* ought to do the same; as also, that the said *B.* shall make payment to

' the said C. of such further sum in name of
 ' damages and expences, as the said Lords of
 ' council and session shall think fit to modify,
 ' in case of wrongous suspending, after discus-
 ' sing the letters of suspension proposed to
 ' follow hereupon. And I the said B. bind
 ' and oblige me, my heirs and executors, to
 ' free, relieve and harmless keep the said A.
 ' his heirs and executors, of this present
 ' bond of cautionry, and of all cost, damage
 ' or expence which he may sustain or incur
 ' thereby any manner of way. Registration
 ' in the books of session for letters of horn-
 ' ing on six days charge, &c.'

Notandum, 1mo, That in all suspensions
 whatsoever, the party applying for them must
 in the body of his bill offer caution; but if
 his circumstances are such, that he cannot
 prevail with any friend to engage for him,
 the Lords are in use to allow juratory caution;
 that is to say, the party swearing, that
 he is unable to find a good surety, and grant-
 ing a disposition of all his effects for the char-
 ger's security and payment in case of wrong-
 ous suspending. The Lords sustain this in
 place of caution, and the clerk writes on the
 the back of the bill accordingly.

2do, If the party charged, does not incline
 to trouble any of his friends to be surety for
 him, he has it in his power to avoid it, by
 consignment of the sums charged for in the
 hands

hands of the clerks to the bills; and these suspensions, which proceed upon consignation, are commonly past with the greatest ease, if there are not some just grounds of challenge of the debt charged for.

3thio, Whether the charge proceed for payment of a liquid sum of money, or to perform a deed, such as disposing of lands, delivering of victual, or any other subject of contract, the caution is to be found at obtaining the suspension, in the precise terms of the charge, otherways the writer to the signet ought not to present it, nor ought the clerk to the bills to receive it.

The person charged being thus supposed to have provided a bond of cautionry, the writer to the signet draws up his reasons in the form of a bill; and it is read by the clerk of the bills to any one of the Lords of session, who, by weekly turns, meet betwixt nine and ten, for hearing such bills in time of session, and twice in the week in time of vacance; and if the judge find the reasons of suspension relevant, with some sort of verification attending them, then he commonly passes the bill; upon which, in that case, the clerk writes the deliverance in the following terms, on the back of the bill: *Fiat summonitio ut petitur*,
 ‘ To the — day — and in the mean
 ‘ time, suspends and discharges, to the —
 ‘ day of the same month, that the verity be
 ‘ known, because A. B. hath become cauti-

‘ oner

‘oner for the complainer to the effect with-
‘in mentioned.’

The bill being thus past, and the caution
received, (whether common caution or ju-
ratory, or that consignation is made by the
party,) to which the deliverance by the clerk
will be accordingly adapted, it is then the du-
ty of the writer to the signet, to expedite the
letters of suspension, which are to pass under
the king’s signet, reciting the bill *verbatim*.

Suspension.

‘GEORGE, &c. Forasmuch as it is humbly
‘meant and shown to Us by Our lo-
‘vite *A.* that where the said complainer is
‘lately charged by virtue of letters of horn-
‘ing, raised at the instance of *B.* to make pay-
‘ment to him of the principal sum of — *Ster-*
‘*ling* money, — money foresaid of penalty, and
‘annualrent of the said principal sum, bygone
‘since — and in time coming, during the not-
‘payment, contained in a bond granted by *A.*
‘to the said *B.* and for payment of which,
‘the said *B.* obtained decret before the she-
‘riff of — against the said *A.* and where-
‘upon he raised letters of horning, and that
‘within a certain short space next after the
‘charge, under the pain of rebellion, and
‘putting of the said complainer to the horn,
‘most wrongously and unjustly, considering it
‘is of verity, 1mo, (*Here take in the reasons of*
‘*suspen-*

‘ *suspension as in the bill, and then say,*) and
 ‘ therefore, the said letters, charge and de-
 ‘ creet ought and should be suspended at the
 ‘ said complainer’s instance ; nevertheless, for
 ‘ the more obedience, the said complainer has
 ‘ found caution acted in Our books of coun-
 ‘ cil and session, for payment to the charger
 ‘ of the sums charged for, in case it shall be
 ‘ found at discussing the aforesaid reasons in
 ‘ the process of suspension to follow hereup-
 ‘ on, that he ought so to do ; and therefore,
 ‘ the said letters and charge ought and should
 ‘ be *simpliciter* suspended, for the reasons and
 ‘ causes foresaid, and others to be proponed
 ‘ at the discussing hereof. *Our Will is here-*
 ‘ *fore,* and We charge you strictly, and com-
 ‘ mand, that immediately after sight hereof,
 ‘ ye pass, and in Our name and authority,
 ‘ lawfully summon, warn and charge the said
 ‘ *B.* personally, or at his dwelling place, to
 ‘ compear before the Lords of Our council
 ‘ and session at *Edinburgh*, or where it shall
 ‘ happen them to be for the time, the —— day
 ‘ of —— next to come, in the hour of cause,
 ‘ with continuation of days, bringing with
 ‘ him the foresaid pretended bond, and de-
 ‘ creet obtained before the said sheriff there-
 ‘ on, and the foresaid letters of horning rais-
 ‘ ed upon the same, against the said com-
 ‘ plainer, with the executions thereof, to be
 ‘ seen and considered by Our said Lords, and
 ‘ to hear and see the same, haill effect and ex-

‘ ecution

execution thereof, and proceſs of horning contained therein, *ſimpliciter* ſuſpended upon the ſaid complainer, for the reaſons and cauſes foreſaid, and others to be propoſed at diſcuſſing hereof: Attour, We and the ſaid Lords of Our council and ſeſſion, have ſuſpended, and hereby ſuſpend the foreſaid letters, and charge, and whole effect and execution thereof, and grounds and warrants whereupon the ſame proceeded upon the ſaid complainer, diſcharging hereby all meſſengers at arms, and other officers of the law, from putting the ſaid letters to any further execution againſt the complainer, and of their offices in that part in time coming, in the mean time, while the — day of the ſaid month of — that the verity be known; according to juſtice, becauſe F. has become cautioner for the complainer, to the effect above mentioned, as ye will answer, &c. in common form.

Notandum, 1mo; That if the ſuſpender be incarcerated by letters of caption, following on the charge propoſed to be ſuſpended; in that caſe, the recital of the bill muſt make mention of the caption and incarceration; and the writer, in expeding the letters, after the ordinary ſtile in the will, muſt ſubjoin a charge to ſet at liberty, immediately before the words, *according to juſtice*. The ſtile of which runs in theſe words: ‘ Siklike,
‘ that

"that ye in Our name and authority, com-
 "mand and charge the provost, or any one of
 "the baillies of the said burgh of _____
 "for the time, and the keeper of their tol-
 "booth, personally, or at their dwelling pla-
 "ces, to set the said *A.* at liberty furth of
 "their said tolbooth, within which he at pre-
 "sent remains incarcerated, as said is, and that
 "within twenty four hours next after they
 "be charged by you thereto, under the pain
 "of rebellion, and of putting them to the horn;
 "wherein if they fail, the said twenty four
 "hours being first come and bygone, that im-
 "mediately thereafter, ye denounce them Our
 "rebels and put them to the horn, and use
 "the hail remanent order against them pre-
 "scribed by law.'

2do, If the debitor is incarcerated by vir-
 tue of letters of caption, in that case, before
 he can apply for a suspension of the debt and
 letters of liberation, he must make intimation
 to the charger of his intention so to do, and
 produce an instrument to that purpose, taken
 in the presence of a notary and witnesses, o-
 therways, by act of federunt, the clerk should
 neither receive, nor the Ordinary pass the bill
 of suspension, nor indeed ought the writer
 to the signet to present it.

3tio, When the party obtainer of the sus-
 pension is unable to find caution, the bill, as
 is before observed, may pass upon juratory
 caution;

caution; that is, the suspender consigning a disposition of all his effects, in favours of the charger, and swearing to the truth of it, and also, that he is not able to obtain better caution: But before a bill is offered to be passed upon such caution, the presenter thereof, by act of sederunt, 8th *November* 1682, is bound to make intimation to the charger of the diet of presenting it, that so he may attend and object, if he find occasion for it.

4to, The judges sometimes pass bills of suspension without either caution or consignation; but this is only done in very particular cases, and *causa cognita*, and where the charge appears evidently by clear documents, to be groundless and calumnious; but of such charges there is less danger, than of suspenders attempting to procure delays of payment of their just debts, upon false and frivolous reasons, which is but too common; and it becomes the judges to advert to the tenor of suspensions, more than is ordinarily done, and thereby prevent many abuses that have crept in concerning them.

5to, By special statute, the suspending of ministers stipends, and schoolmasters salaries is forbidden, without consignation of the sums charged for; and sometimes even of double, to prevent the party from attempting suspensions of these alimentary debts, without very near and pregnant grounds; and all suspensions of charges for the king's revenue, that is,

is, the cess, stent and supply, or the like, and discharged to be granted on any cause whatsoever.

6to, When letters of suspension are expedite and execute, it is the business of the charger to insist in discussing them; towards which, the first step is to call for them, or in other words, put up a protestation in the minute book, and if the suspension is not produced by the obtainer within ten days, then protestation is admitted by the judges at the charger's instance, and an act extracted thereon, after which the charger may proceed in putting his diligence to further execution; but if the suspender appear and produce his suspension, then the reasons are heard and debated before an Ordinary, as in a common process; and if they are finally over-ruled, a decret is pronounced, finding the former letters and charge to have orderly proceeded, and ordaining them to be put to further execution, which the charger may warrantably do, without raising any new diligence, except only with respect to the cautioner in the suspension, whom if the charger find it necessary to overtake, he must go to the clerk of the bill with the decret, finding the letters orderly proceeded, and require him to register the bond of cautionry, which being done, the party, upon a recital of the suspension, decret finding the letters orderly proceeded, and the extract of the bond of caution, may obtain letters

letters of horning against the cautioner, and to proceed to personal diligence by caption or otherways, for the recovery of the debt.

7^{mo}, As it is a part of the duty of the clerk of the bills to receive the cautioner when the suspension is first past, so he is liable to the charger for the debt; at least, for his damages, in case he accept of a cautioner who is not habite and repute solvent at the time; and as, on many occasions, cautioners may be offered whom the clerk has had no occasion to know or hear of, he sometimes insists to have the cautioner's sufficiency attested by a third party known to him, which is ordinarily done by an obligation on the back of the bond of caution, in the following terms, viz. ' I A. B. do hereby attest the solvency and sufficiency of C. D. cautioner within mentioned, for payment of the debt now suspended, as is within set down; and I bind and oblige me, my heirs and executors, to be subsidiary liable for him, and I consent to the registration hereof, &c.' And where such attestations are granted, and the suspension discussed, and also the cautioner registered at the horn, then the charger may likewise obtain letters of horning against the attester, which proceed upon a recital of the original ground of charge, the suspension, decret finding the letters orderly proceeded, and the bond of caution, attestation and act of federunt, authorising diligence against the attester, and
subsume

Subsume upon the horning execute and register against the cautioner,

Another step of legal diligence common and ordinary in practice, and which it is the proper business of writers to expedite under the signet, are letters of inhibition, by which is meant a warrant in the king's name, issued by the authority of the Lords of session, his judges at the instance of any creditor who applies for the inhibition, interpellating the debtor from either contracting any debts on, or making any voluntary disposition of his lands or heritable subjects; but also, the whole lieges to purchase the same from him, and certifying both him and the lieges, that all voluntary dispositions and conveyances of the debtor's estate shall be void in prejudice of that debt.

These letters of inhibition pass always upon a bill or warrant, reciting the ground of debt; after the deliverance on the bill, they are wrote out agreeable thereto, in the following form, *viz.*

“ **G**EORGE, &c. Forasmuch as it is humbly meant and shown to Us by Our loving vassal, *A.* That where *B.* by his bond dated ——— for the causes therein specified became bound to pay to the said *A.* and his heirs, &c. the sum of 100 *l.* Sterling money, at the term of ——— with 20 *l.* money foresaid of liquidate expences in case of failzie, and the due and legal interest of the

“ fail

said principal sum, from ——— to the fore-
 said term of payment, and yearly and term-
 ly thereafter, during the not payment of
 the said principal sum, as the said bond, re-
 gistrate in the sheriff court books of ———
 upon ——— and having a decreet of the
 sheriff depute thereof interponed thereto,
 shewn to the Lords of Our council and ses-
 sion, has testified; and the said *B.* knowing
 perfectly, that the said *A.* is to suit all
 manner of execution both personal and real
 against him for making payment to him of
 the sums of money, principal, annualrents and
 liquidate expences, contained in the bond a-
 bove written, he, in manifest defraud, hurt
 and prejudice of the said complainer there-
 anent, intends, as he is informed, to sell,
 annalizie, wadset, dispoone, resign, renounce,
 dilapidate and put away, all and sundry his
 lands, heritages, tenements, annualrents, life-
 rents, reversions, mills, woods, fishings, tacks,
 steadings, rooms, possessions and others what-
 soever pertaining and belonging to him,
 to make publick and private alienations,
 wadsets, dispositions, assignations, resignati-
 ons, renunciations, and other rights and se-
 curities thereof, and to contract and take on
 debts, and to grant bonds and other rights
 and securities therefor, without remeid be
 thereto provided, as is alledged. *Our Will*
is herefore, and We charge you strictly,
 and command, that immediately upon sight
 hereof, ye pass, and in Our name and

‘ authority, inhibit and discharge the said *B.* per-
 ‘ sonally, or at his dwelling place, that he in
 ‘ noways sell, annalzie, wadset, dispone, resign,
 ‘ renounce, dilapidate, nor put away any of
 ‘ his lands, heritages, tenements, annualrents,
 ‘ liferents, reversions, mills, woods, fishings,
 ‘ racks, steadings, rooms, possessions, and o-
 ‘ thers whatever, pertaining and belonging
 ‘ to him; nor make any private or publick a-
 ‘ lienations, dispositions, wadsets, assignations,
 ‘ resignations, renunciations, or other rights
 ‘ or securities thereof, to any person or per-
 ‘ sons, nor contract or take on debts, nor give
 ‘ bond or other right or security for the same,
 ‘ nor do any other fact or deed of any sort,
 ‘ directly or indirectly, whereby the right of
 ‘ the lands and others foresaid, pertaining to
 ‘ the said *B.* may be anyways evicted or adjudg-
 ‘ ed from him, in defraud, hurt or prejudice of
 ‘ the complainer, anent the payment making
 ‘ to him of the sums of money, principal, an-
 ‘ nualrents and liquidate expences contained
 ‘ in the bond above narrated; and also, that
 ‘ ye, in Our name and authority foresaid, in-
 ‘ hibit and discharge all and fundry, Our lieg-
 ‘ es, and others whom it effeirs, by open
 ‘ proclamation, at the market crofs of — and
 ‘ all other places needful, that they in noways
 ‘ presume or take upon hand, under whatsoe-
 ‘ ver colour or pretext, to buy, block, take
 ‘ or receive in wadset, for mail, mail-free or
 ‘ otherways, from the said *B.* any of his lands

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heritages, rooms, possessions or others fore-
said, pertaining to him, nor receive from
him any alienations, dispositions, wadsets or
other rights or securities thereof, nor lend
to him any sums of money, nor receive from
him any bond, or other right or security for
the same, in defraud or prejudice of the
complainer, as said is; certifying also those
who do in the contrair, that the same shall
be null and of none avail, force, strength or
effect, and shall make no faith in judgment,
nor outwith the same in time coming; and
that ye cause registrate these Our letters, with
the executions thereof, within forty days, con-
form to act of parliament; according to ju-
stice, because the Lords have seen the pre-
cept above mentioned, as ye will answer,
&c.

Ex deliberatione dominorum concilii.

Notandum, imo, That inhibitions may be not
only on liquid and clear grounds of debt in
writ, such as bonds, bills, decreets and eve-
ry other sort of obligations in writing under
the party's hand; but also, upon proceſſes
depending before the court of ſeſſion, or any
inferior juſge, for conſtituting a debt not in-
ſtructed *ſcripto*, againſt the party; and in all
caſes, the particular ground of debt on which
the inhibition is raiſed or aſked, muſt be pro-
duced before the juſge at paſſing the bill, or
warrant for the letters, and the letters them-

felves always bear so immediately before the conclusion of them.

2do, It is to be observed, that tho' the stile of an inhibition is so general, as apparently to comprehend moveables; yet, in reality, it does not extend to them, but to heritage or heritable subjects alone: But the effect of it reaches to the granting of moveable bonds, so far as these may be the foundation of affecting or carrying off the heritage.

3tio, It is to be observed, that inhibitions being *stricti juris* (as all diligences for most part are) secure the creditor only for such debts as are specially cited in the bill or letters of inhibition; and therefore, if a party were creditor in two or three debts, but only made his inhibition refer to one of them, it would have no effect in securing the other against future contractions.

4to, It is to be noticed, that the effect of inhibitions is to strike, not only against deeds affecting heritage belonging to the person inhibited at the time of executing the inhibition; but also, against any lands or heritable subjects he may afterwards acquire.

5to, An inhibition being a prohibition personal to him against whom it is executed, does not subsist so as to hinder the inhibited person's heirs to sell at pleasure, unless it is renewed against the heirs after the predecessor's death; but the effect or benefit of it transfers active, in favours of the heirs or execu-

tors,

tors (according as it is an heritable or moveable debt) of the person, raiser of the inhibition.

6to, The effect of an inhibition strikes against all voluntary rights whatsoever, granted by the debtor, in prejudice of the raiser of the inhibition, and is a good ground in law upon which every such voluntary deed may be reduced or set aside; nor will it be sustained to elide the inhibition, for a purchaser to plead, that tho' he has acquired by a voluntary right; yet he has paid an equivalent value, and that he is ready to make that value or price forthcoming to the inhibitor; for notwithstanding of this, the sale will and ought to be set aside, because it is done, *spreto mandato judicis*.

7mo, As an inhibition strikes only against voluntary deeds relating to the heritage, it cannot consequently reach deeds which the debtor may be compelled to grant in virtue of antecedent obligations or agreements, entered into between third parties; and therefore, it will not be a good ground for reducing a renunciation of a wadset right, where an order of redemption is used by a reverser, nor of any annualrent, or other redeemable right; because that might be an inconveniency to the reversers, who ought not to be prejudged by third party's debts or deeds, with whom they or their predecessors may have dealt or contracted long prior to the inhibition: Howe-

ver, the Lords of session still endeavour to favour creditors who are *in cursu diligentia*, upon the principle, that *vigilantibus subveniunt jura*, and made an act of sederunt, February 19th 1680, whereby they declared, that if the raiser of an inhibition, upon search of the registers, or otherways, discovering incumbrances of annualrents, or upon wadset rights, in favours of their inhibited debtor, shall make intimation of the inhibition to the reversers, then the judges would not sustain renunciations or grants of redemption, altho' upon true payment, unless such redemption proceed by way of action, to which the inhibitor must be called for his interest, or by suspension, or multiple-pounding, that so the inhibitor may have an opportunity of recovering his payment; or, in other words, of affecting the same, for which the lands or annualrent are redeemable, and proposed to be redeemed by the reverser, *habili modo*.

8vo, If the person inhibited lies under an obligation anterior to the inhibition to sell his lands, he may, notwithstanding of the inhibition, implement that obligation, agreeable to the precise tenor of it, which will be effectual to the receiver: But if the obligation to sell is not very explicate and direct, the inhibition will strike against any disposition executed in consequence of it; and for the same reason, if a person inhibited shall grant an heritable bond of corroboration to affect his lands after inhibition, tho' the bond corrobo-

ated was granted prior to the inhibition; such corroborative security is liable to be set aside at the instance of the inhibitor.

9no, The effect of an inhibition is not to make deeds done in prejudice of the debt *ipso jure* null, or by way of exception, but only to be the ground of an action, of reducing all these voluntary prejudicial deeds at the discretion of the inhibitor: And yet, it might perhaps be an improvement in the practice, that it were otherwise, and that inhibitions had their full effect summarily by way of exception or defence, as it would save a considerable expence to the lieges who use this sort of diligence, and who thereby become the favourites of the law, and intitled to dispatch as well as a preference; and the judges are so far of this opinion, that in ranking of creditors, they never fail to prefer inhibitors to the other persons competing with them, against whose debts the inhibitions may strike, altho' in other respects they may be intitled to come in *pari passu*, in the course of their other diligence, without the necessity of any process of reduction at the instance of an inhibitor; but tho' this be the practice in the course of rankings, yet, in other instances, inhibitors are laid under a disadvantage of being put to the necessity and expence of a process of reduction; for example, suppose a person inhibited to dispoise his estate, and that a competition ensues betwixt the inhibitor and
the

the disponee, it would afford a good defence to the disponee, that the creditor inhibitor, altho' he had arrested, had not yet brought an action of reduction; or, at least, had obtained no decret therein, and so the disponee would be preferred to all the intermediate rents of the estate, before the date of the decret of reduction.

Item, It is to be observed, as a consequence of what has been already said, that an inhibition is sufficient to reduce any ground of debt contracted posterior thereto, which may affect the debtor's estate, notwithstanding the estate may be sufficient in value, not only to answer the debt in the inhibition, but also the posterior debt; but in such a case, it would be prudent in the posterior creditor, to offer payment of the prior debt on which the inhibition was raised, which probably the judges, *ex equitate*, would oblige the inhibitor to accept of, and convey his debt to the posterior creditor; because, when the inhibitor receives payment, he is noway prejudged, and when he refuses to convey, in such case it is acting *in emulationem vicini*, which the law checks in many instances.

Besides the ordinary form of inhibitions, at the instance of a common creditor against his debtor, there is another sort of inhibition allowed by law, not so frequent but sometimes necessary, and consequently fit to be known;

and

and that is an inhibition at the instance of a husband against his wife.

This inhibition takes its rise from the supposed profusion, prodigality or indiscretion of the wife, and passes as much in course, as an inhibition in behalf of a creditor against his debtor; but the stile is somewhat different; and therefore, here subjoined.

*Inhibition at the Instance of the Husband
against his Wife.*

‘ **G**EORGE, &c. Forasmuch as it is humbly
‘ meant and shown to Us by Our lovite,
‘ *A.* that where *B.* the complainer’s wife, with
‘ whom he has lived in lawful wedlock for
‘ these several years bygone, constantly and
‘ regularly supporting her, as well in the
‘ comforts and conveniencies of life, suitable
‘ to her and her circumstances and degree,
‘ at all times and upon all occasions, as in the
‘ necessities of life; having of late shaken off the
‘ reciprocal tie of duty and affection, which she
‘ owes to the complainer as her husband, does
‘ not only squander, dilapidate and put away
‘ the insight and outfight plenishing and furni-
‘ ture, and other goods and gear belonging
‘ to him, and in common betwixt them as
‘ husband and wife; but also, not satisfied
‘ therewith, she daily and continually con-
‘ tracts, and takes on debts and sums of mo-
‘ ney, and buys and purchases abulziements,
‘ meat,

' meat and drink, and several other things in
 ' great quantities, and to great values, which
 ' she in no manner stands in need of, and which
 ' are noway suitable nor becoming her and
 ' her rank and circumstances; and that with
 ' and from whom she can find the least coun-
 ' tenance or credit, either upon bond, ticket,
 ' subscribed accompt, or promise of payment,
 ' as she may best prevail with them: And all
 ' this, with a cruel and malevolent design to
 ' burden and affect the complainer, and his
 ' means and estate therewith, and with a de-
 ' sign to ruin his circumstances and credit, to
 ' his great hurt, misfortune and prejudice,
 ' who, as the complainer first received her
 ' into his family as his lawful wife, so he
 ' was, and is still willing to cherish and en-
 ' tertain her according to his circumstances
 ' and her degree; and yet, after all essays to
 ' reclaim her from these undutiful and un-
 ' natural practices, she still persists and conti-
 ' nues therein, to the complainer's great hurt
 ' and prejudice, without remeid be thereto
 ' provided, as is alledged. *Our will is here-*
 ' *fore,* and We charge you strictly and com-
 ' mand, that incontinent these Our letters seen,
 ' ye pass, and in Our name and authority,
 ' inhibit and discharge the said *B.* the com-
 ' plainer's wife personally, or at her dwelling
 ' place, that she noways sell, annalzie, give
 ' in pledge, gift, dispose of, dilapidate, nor
 ' put away any of the complainer's goods,
 ' gear,

gear, fums of money, corns, cattle, horfe,
 nolt, ſheep, or other outſight or inſight
 plenifhing, utenſils or domicils, abulziements,
 or others whatſomever, pertaining and be-
 longing to her, or the complainer in com-
 mon betwixt them, whether within or with-
 out his dwelling houſe, nor contract or take
 on debts or fums of money, from any per-
 ſon or perſons whatſomever, by bond, tick-
 et, accompt, promiſe, paſſion, nor any other
 manner of way, to the complainer's hurt,
 detriment or prejudice; or whereby his per-
 ſon, lands, means and eſtate; may be any
 ways affected or evicted: As alſo, that ye in
 Our name and authority foreſaid, inhibit
 and diſcharge Our lieges, and others whom
 it effeirs, by open proclamation at the mar-
 ket croſs of ————— and other places
 needful, that they, nor none of them, di-
 rectly nor indirectly, preſume nor take on
 hand, under whatſoever colour or pretext, to
 buy, block, take or receive in pledge or
 gift for money, or otherways, from the ſaid
 B. the complainer's wife, any goods, gear,
 corns, cattle, outſight or inſight plenifhing,
 utenſils or domicils, abulziements or others
 whatſoever, pertaining to the ſaid complain-
 er, or to her, or in common betwixt them,
 whether within or without his dwelling
 houſe, nor yet give or advance to her fums
 of money, abulziements, merchant ware, or
 other furniſhings whatſoever, upon bond,
 pledge

‘ pledge, credit, or otherways, in time coming,
 ‘ without the said complainer’s special know-
 ‘ ledge, advice, licence and consent first had
 ‘ and obtained thereto; certifying all them
 ‘ that do in the contrary, that all such buy-
 ‘ ings, blockings, gifting or impignoring,
 ‘ and all bonds or other rights or securities to
 ‘ be granted for the same, shall be null and of
 ‘ none avail, force, strength or effect, with all
 ‘ that may follow thereupon, and shall make
 ‘ no faith in judgment, nor outwith the same
 ‘ in time coming; and that the complainer
 ‘ shall have good action, right and interest to
 ‘ claim and repeat from them all such goods
 ‘ and gear, as shall be bought and received
 ‘ by them from the said B. the complainer’s
 ‘ wife, or by her gifted, or disposed of to
 ‘ them, and that he shall be noways liable
 ‘ for, or obliged to pay or return to them,
 ‘ any sums of money to be advanced, or any
 ‘ goods or gear to be furnished by them to
 ‘ her in time coming. *According to justice,*
 ‘ &c.’

Both these sorts of inhibitions, as well that
 against a debtor, as that against a wife, may
causa cognita be refused by the judges when
 demanded, or recalled after they are granted,
 when it can be clearly instructed, that either
 there was no just ground for demanding them,
 that the occasion has ceased; and instances of
 refusing, as well as recalling of inhibitions a-
 gainst

gainst debtors, and against wives, have occurred in practice, and may be found in the decisions of the court of session.

There is a third sort of inhibitions, called an inhibition of teinds, which is granted at the instance of heritors, titulars, tacksmen of other mens tithes, upon producing of their rights against possessors of lands, and other intrumitters, the design and intent of which is, not only to establish the titular's right, but to prevent the possessors from gathering in the fruits of the ground, till these who have right to the tithes *ipsa corpora*, have an opportunity of drawing their share of the fruits, which is the tenth sheaf of all the corn growing thereon. These last mentioned inhibitions are granted against all and sundry heritors and possessors in general terms, and are to be only executed at the parish church upon a *Sunday*, after divine worship; but need not, like all other inhibitions, be executed against the party personally, or at his dwelling place, nor against the lieges at the market cross, nor need they be registered either in the general register, or in the register of the shire wherein the lands lie, as other inhibitions must be; and the consequence of such inhibition of tithes amounts wholly to this, that after they are used and executed, if the possessors carry off their corns before they are teinded, they are liable by law in the highest prices which the titular can instruct he might have

A a a

received

received, and in his full damages, which is recovered by a process, called a spulzie of teinds.

Of which Inhibition of Teinds, the Form follows.

‘ **G**EOERGE, &c. Forasmuch as it is humbly
 ‘ meant and shewn to Us by Our lovite,
 ‘ *A. B.* that where he stands publickly infect
 ‘ in the lands of ——— lying within the
 ‘ sheriffdom of ——— and in all and haill,
 ‘ the teind sheaves both great and small, as
 ‘ well parsonage as vicarage, fruits and emo-
 ‘ luments due and payable furth of the pa-
 ‘ rishes of ——— which of old belonged to
 ‘ the monastery of ——— as parts of the
 ‘ spirituality thereof, as the complainer’s in-
 ‘ strument of sasine, under the sign and sub-
 ‘ scription of ——— notary publick, dated
 ‘ ——— duly registrate, conform to act of
 ‘ parliament, shewn to Our Lords of council and
 ‘ session hath testified; by virtue of which infect-
 ‘ ment, he, the said complainer, has good and
 ‘ undoubted right to the teinds, both parso-
 ‘ nage and vicarage of the foresaid five parish-
 ‘ es, and haill other lands of the foresaid ba-
 ‘ rony, and that for this crop and year of
 ‘ **GOD** ——— and yearly in all time there-
 ‘ after, and ought and should be answered,
 ‘ obeyed and paid thereof; yet the heritors,
 ‘ liferenters, wadsetters, tenants, tacksmen and
 ‘ possessors of the lands and others, within the

‘ said

' said five parishes, intend, as the complainer
 ' is informed, not only to shear and cut, but
 ' also to intromit with, lead away, take, use
 ' and dispose upon the haill corns and grain
 ' growing or to grow thereupon, for the cur-
 ' rent crop and year, and in time coming,
 ' without any tack, licence, warrant or tole-
 ' rance from the said complainer, unless re-
 ' meid be thereto provided, as is alledged.
 ' *Our will is herefore*, and We charge you
 ' strictly and command, that immediately up-
 ' on sight hereof, ye pass, and in Our name
 ' and authority, inhibit and discharge all and
 ' sundry, the heritors, liferenters, wadsetters,
 ' tenants, tacksmen, and possessors of the lands
 ' and others within the said five parishes, by
 ' open proclamation at the church doors of
 ' the said respective parishes, and by affixing
 ' and leaving an just and authentick copy here-
 ' of thereupon, upon a sabbath day in the
 ' forenoon, after divine service, that they,
 ' nor none of them, presume or take upon
 ' hand, under whatever colour or pretext, to
 ' lead, intromit with, or take away the corns
 ' growing upon the lands and others, lying
 ' within the said five parishes, for this current
 ' crop — without tack, licence or tolerance
 ' from the said complainer, first had and obtain-
 ' ed thereto; but on the contrary, they time-
 ' ously, and before any such leading, acquaint
 ' the complainer therewith, to the effect he
 ' may by himself, his factors, servants, and o-
 ' thers in his name, having his power and

' warrant for that effect, come and teind with
 ' them, conform to his right; certifying them
 ' that do in the contrary, that they shall be
 ' holden as violent spulziers, and made liable
 ' therefor, conform to the laws of the land
 ' in that case provided; and that ye use the
 ' hail remanent order against them provided
 ' by act of parliament. According to justice,
 ' because the Lords have seen the instrument
 ' of fasine above mentioned, as ye will answer
 ' to us, &c.'

Ex deliberatione dominorum concilii.

As was before observed, letters of inhibition are not only granted upon bonds, registered or unregistered, and other liquid instructions of debt, such as bills, promissory notes, decreets, and the like; but also, upon actions or processes depending either before the Lords of session, or any inferior judges, for constituting of debts, and very often the party chooses, besides the letters of inhibition, intended to prevent the alienation of heritage to his prejudice, to raise also letters of arrestment, to prevent the embezzling or squandering of moveables, till the event of the suit; and both these are contained in one warrant or bill, and also, in one set of letters under the signet; and sometimes they are taken out separately, of which last practice, the reason probably may be, that where the arrestment is joined with the inhibition, it lengthens it

too much for the register; however, it may not be improper to subjoin an example of an inhibition and arrestment in one warrant upon a depending action, which is as follows.

‘ **G** EORGE, &c. Forasmuch as it is humbly
 ‘ meant and shewn to Us by Our lo-
 ‘ vite, *A. B.* that where the said complainer
 ‘ has summons and action depending at his
 ‘ instance, before the sheriff of —————
 ‘ against *C. D.* concluding against him for pay-
 ‘ ment of the principal sum of ———— *Ster-*
 ‘ *ling* money, with ———— money foresaid
 ‘ of penalty, and whole annualrents of the
 ‘ said principal sum bygone, since —————
 ‘ and in time coming, contained in a bond
 ‘ granted by the said *C. D.* as also, conclud-
 ‘ ing for payment of the sum of ———— *Ster-*
 ‘ *ling*, in name of damages and expences of
 ‘ plea, as the said summons, with the executi-
 ‘ on thereof, shewn to the Lords of Our coun-
 ‘ cil and session has testified; and the said *C.*
 ‘ *D.* knowing perfectly, that the complainer
 ‘ will prevail in the said action, and obtain
 ‘ decreet condemnator against him, he, in ma-
 ‘ nifest defraud, hurt and prejudice of the
 ‘ complainer thereanent, intends, as the com-
 ‘ plainer is informed, not only to sell, alie-
 ‘ nate, wadset and dispoise, resign, renounce,
 ‘ dilapidate and put away, his lands, heritages,
 ‘ annualrents, liferents, reversions, mills, woods,
 ‘ *A a a 3* ‘ fishings,

‘ fishings, tacks, steadings, rooms, possessions
 ‘ and others, pertaining and belonging to him,
 ‘ and to make private and publick alienations,
 ‘ dispositions, wadsets, assignations, resignati-
 ‘ ons, renunciations, and other rights and se-
 ‘ curities thereof, and to contract and take on
 ‘ debts, and to grant bonds and other rights
 ‘ and securities for the same; but also, to squan-
 ‘ der and put away his moveable goods and gear,
 ‘ corns, cattle, horse, milt, sheep, debts and
 ‘ sums of money, and other moveable effects
 ‘ belonging to him, unless remeid be thereto
 ‘ provided, as is alledged. *Our will is here-*
 ‘ *fore,* and We charge you strictly and com-
 ‘ mand, that immediately upon sight hereof,
 ‘ ye pass, and in Our name and authority,
 ‘ inhibit and discharge the said *C. D.* perso-
 ‘ nally, or at his dwelling place, that he no-
 ‘ ways sell, annalzie, wadset, dispoise, resign,
 ‘ renounce, dilapidate nor put away any of
 ‘ his lands, heritages, annualrents, liferents,
 ‘ reversions, mills, woods, fishings, tacks, stead-
 ‘ ings, rooms, possessions, or others whate-
 ‘ ver, pertaining and belonging to him, nor
 ‘ make any private or publick alienations, dis-
 ‘ positions, wadsets, assignations, resignations,
 ‘ renunciations, or other rights or securities
 ‘ thereof, to any person or persons, nor con-
 ‘ tract or take on debts, nor give bond or o-
 ‘ ther right or security for the same, nor do
 ‘ any other fact or deed of any sort, directly
 ‘ or indirectly, whereby the right of the lands
 ‘ and

'and others foresaid, pertaining to the said
 'C. D. may be anyways evicted for adjudged
 'from him, in defraud, hurt or prejudice of
 'the said complainer, anent the implement and
 'fulfilling to him the whole conclusions of
 'the foresaid libel, and depending process,
 'and decret to follow thereupon: And al-
 'so, that ye in Our name and authority fore-
 'said, inhibit and discharge Our lieges, and
 'others whom it effeirs, by open proclamati-
 'on, at the market cross of ——— and all
 'other places needful, that they in noways
 'presume or take upon hand, under whatso-
 'ever colour or pretext, to buy, block, take
 'or receive in wadset, mail, mail-free, or other-
 'ways, from the said C. D. any of his lands, heri-
 'tages, rooms, possessions, or others foresaid,
 'pertaining to him, nor receive from him a-
 'ny alienations, dispositions, wadsets, or o-
 'ther rights or securities thereof, nor lend
 'to him any sums of money, nor receive from
 'him any bond, or other right or security
 'for the same, in defraud, or to the preju-
 'dice of the said complainer, as said is; cer-
 'tifying all those that do in the contrary,
 'that the same shall be null and of none a-
 'vail, force, strength or effect, with all that
 'shall follow thereupon, and shall make no
 'faith in judgment, nor outwith the same in
 'time coming; and that ye cause register
 'these Our letters, with the executions there-
 'of, within forty days, conform to act of
 'par-

' parliament. And siklike, that ye in Our
 ' name and authority, fence and arrest, all
 ' and fundry, the said *C. D.* his readiest move-
 ' able goods, gear, corns, cattle, horse, nolt,
 ' sheep, mails, farms and duties of lands, and
 ' heritages, debts and sums of money, and all
 ' other moveable means and effects whatsoever,
 ' ver, pertaining and belonging to him, where-
 ' ever or in whose hands soever the same may
 ' or can be found, all to remain under sure fence
 ' and arrestment, at the instance of the said
 ' complainer, ay and while sufficient caution
 ' and surety be found, acted in the books of
 ' Our council and session, that the same shall
 ' be made forthcoming to the complainer as
 ' accords of the law. According justice, be-
 ' cause the Lords have seen the dependence
 ' above mentioned, as ye will answer, &c.

Ex deliberatione dominorum concilii.

It may not be improper to observe again
 here, that inhibitions, as they are to be ex-
 ecuted against the party personally, or at his
 dwelling place, and published against the lieges
 at the market cross of the head burgh of the
 shire, wherein the party inhibited dwells, at the
 time of the first execution against him, so as to
 give its full effect in law; the inhibition must be
 registered within forty days, not of the date
 of the letters, but of the day of executing
 it against the private party, otherways, it is

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 ty in
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 hall be

void, tho' it is at the discretion of the messenger to begin with executing against the lieges, and thereafter, against the private party inhibited; yet this is not the ordinary way, nor is it agreeable to the precise words of the letters, which direct him apparently, to begin with executing against the private party; and should it happen otherways, care must be taken, that both execution and registration be finished within forty days of the first execution, whether that first execution be against the private party or the lieges.

2^{do}, This registration must be made, either within the several counties within which the inhibited person's lands lie, without regard to the residence, or it must be registered in the general register kept at *Edinburgh* for that purpose, which answers for the whole kingdom, and is the safer way when any doubt is entertained about the different shires, within which the inhibited person may have lands. Sometimes it happens, that the debtor in a bond, or other ground of debt, having no heritage to be the subject of an inhibition, but only moveables, the creditor contents himself with letters of arrestment for affecting the moveables, in case he shall be successful in prevailing in his suit or action; and the stile of these letters is almost the same with the last part of the preceeding form, where arrestment is conjoined to an inhibition; but for perspicuity's sake, a draught of *Letters of Arrestment* shall be given.

'GEORGE,

GEORGE, &c. Forasmuch as it is humbly
 meant and shewn to Us by Our loving
 A. B. that where the complainer has summons
 and action intented and depending before
 the Lords of council and session at his in-
 stance, against C. D. for himself, and as charge-
 ed to enter heir in general, and otherways
 passive representing E. F. his father, conclu-
 ding against the said C. D. for payment of
 the principal sum of 100 l. *Sterling* money,
 20 l. money foresaid of liquidate penalty
 and interest of the said principal sum, from
 and since ——— and in time coming, de-
 ring the not payment, contained in a bond
 granted by the said E. F. to G. H. dated —
 and registrate in the books of council and
 session upon ——— which was assigned by the
 said G. H. to the complainer, conform to his
 assignation in the complainer's favours, dated
 ——— and registrate in the sheriff court books
 of ——— the ——— as also, concluding a-
 gainst the said C. D. for payment of the
 sum of 10 l. *Sterling*, contained in his pro-
 missory note to the complainer, dated —
 and siklike, concluding against the said C. D.
 for payment of the sum of 50 l. *Sterling*
 as the price of twenty oxen, sold and deli-
 vered by the complainer to the said C. D.
 in the month of ——— at the agreed price
 of 50 s. *Sterling* each, which the said C. D.
 promised to pay within three months there-
 after; and also, concluding for payment of

20^l. *Sterling*, as the expences of plea, as the said summons and execution thereof, shewn to the Lords of Our council and session have testified; and the said *C. D.* knowing perfectly, that the said complainer will prevail, and obtain decret condemnator against him in the said action; he, in manifest defraud and prejudice of the said complainer, intends, (as the complainer is informed) to sell, dilapidate and put away, all and sundry, his readiest moveable goods, gear, corns, cattle, horse, nolt, sheep, insight plenishing, debts and sums of money, and other moveable effects belonging to him, unless a remedy be thereto provided, as is alleged. *Our will is herefore*, and We charge you strictly, and command, that incontinent these Our letters seen, ye pass, and in Our name and authority, fence and arrest, all and sundry, the said *C. D.* his readiest goods gear, corns, cattle, horse, nolt, sheep, insight plenishing, mails, farms and duties of lands, and heritages, debts, sums of money, and all other moveable means and effects whatsoever, pertaining and belonging to the said *C. D.* where-ever or in whose hands soever the same may or can be found or apprehended, to remain under sure fence and arrestment at the instance of the said complainer, ay and while sufficient caution shall be found acted in the books of council and session, that the same shall be made forthcoming

to

‘ to the complainer, as accords of the law;
 ‘ according to justice, because the Lords have
 ‘ seen the dependence above mentioned, as
 ‘ ye will answer, &c.’

Ex deliberatione dominorum concilii.

These letters of arrestment being commonly on a depending process, are rarely or never used upon debts constituted by decreet against the party himself, because letters of horning are then competent, which always carry arrestment along with them; therefore, as the suit may depend a considerable time, and as it is not absolutely certain, that the raiser of the letters of arrestment will prevail therein; so it falls next to be observed, that the effect of the arrestment goes no further, nor in justice ought to do, than till the party find caution for making the arrested goods or effects forthcoming, which is done by lodging a bond to that effect, by any sufficient person, in the hands of the clerks of the bills.

Follows the ordinary Form of such a Bond.

‘ **I** *H. I.* do, by these presents, bind and
 ‘ oblige myself, my heirs and executors,
 ‘ as cautioner and surety, enacted in the books
 ‘ of council and session for *C. D.* that all such
 ‘ goods, gear, debts, sums of money, or effects
 ‘ whatsoever, belonging to the said *C. D.*

‘ as

as are or shall be arrested in the hands of
L. M. or any other person whatever, by
 virtue of letters of arrestment, raised at the
 instance of *A. B.* against the said *C. D.* shall
 be made forthcoming to all parties having
 interest as accords of the law; and I the
 said *C. D.* bind and oblige me and my heirs,
 to free and relieve the said *H. I.* of all da-
 mage or expence he may sustain or incur
 any manner of way, by and through his
 granting this bond of cautionry, and that
 under the penalty of 10 *l. Sterling*, over
 and above performance. Registration in the
 books of session, only for letters of horning
 on six days.'

The bond of cautionry being thus wrote
 out, and lodged in the hands of the clerk to the
 bills, letters of loosing arrestment are granted
 upon a bill to the Lords, which passes in
 course, and whereof the tenor follows;

GEORGE, &c. Forasmuch as it is humbly
 meant and shown to Us by Our lovite,
C. D. that where *A. B.* has, upon pretend-
 ed grounds, obtained Our letters of arrest-
 ment at his instance, and thereupon has
 caused fence and arrest in the hands of *L.*
M. and divers and sundry other persons de-
 bitors to the complainer, all and sundry
 goods, gear, debts, sums of money, mails,
 farms, profits and duties of his lands and
 heri-

‘ heritages, and other effects pertaining and
 ‘ belonging to him, to remain under sure fence
 ‘ and arrestment, at the instance of the said *A.*
 ‘ *B.* ay and while sufficient caution be found,
 ‘ acted in the books of council and session,
 ‘ that the same shall be made forthcoming to
 ‘ the said *A. B.* as accords of law; and which
 ‘ arrestment is laid on without any just foun-
 ‘ dation or necessity, but out of an emulous
 ‘ intention to distress and hurt the complain-
 ‘ er in his credit, who has, in obedience to
 ‘ the said letters, found caution, enacted in
 ‘ Our books of council and session, for ma-
 ‘ king all such goods, gear, and other effects
 ‘ arrested, forthcoming to the said *A. B.* as
 ‘ accords of the law, and that in order to the
 ‘ loosing of the said arrestment. *Our will is*
 ‘ *heretofore*, and We charge you strictly, and
 ‘ command, that immediately upon sight here-
 ‘ of, ye pass, loose, and take off the fore-
 ‘ said pretended arrestments, made and laid
 ‘ on at the instance of the said *A. B.* upon a-
 ‘ ny goods, gear, debts, sums of money, mails,
 ‘ farms and profits of lands and heritages,
 ‘ and other moveable effects whatsoever, per-
 ‘ taining to the complainer, and how oft any
 ‘ such arrestments shall be made, laid or re-
 ‘ newed, at the instance of the said *A. B.* here-
 ‘ after, by virtue of letters of arrestment,
 ‘ as said is, that ye as oft and of new loose,
 ‘ and take off the same, in respect of the cau-
 ‘ tion found in the said matter, and that ye
 ‘ intimate

intimate the loosing of the said arrestment,
 as well to the said *A. B.* the arrester, as the
 person or persons whatsoever, in whose
 hands the said arrestments are or shall be
 laid on personally, or at their dwelling pla-
 ces, and deliver to them and each of them,
 a copy hereof, subscribed with your own
 hand, or affix and leave the same in the
 lock-hole of the most patent gate or door
 of their respective houses, after knocking
 six several knocks thereon, as use is; or that
 ye deliver the same to their respective wives
 or servants in their name, in case you get ac-
 cess to their houses, and cannot apprehend
 themselves personally; and which copies are
 to contain the day and date of the loosing
 of the said arrestments, the witnesses pre-
 sent thereat, and cautioners name and desig-
 nation found therein, that no ignorance
 may be pretended in the premisses, other-
 ways the said arrestment shall stand and re-
 main unloosed: According to justice, the fore-
 said arrestment not being made by virtue of
 any decreet, and because *H. A.* hath become
 cautioner for the complainer, to the effect a-
 bove mentioned; as ye will answer, &c.

Ex deliberatione dominorum concilii.

There is another diligence under the fig-
 net, allowed by law for the assistance of a
 creditor, in recovering his debt, namely, when
 the debtor not only proves contumacious to

B b b 2

a charge

a charge, but likeways having no effects attachable, but what are within doors, shuts his gates, and denies access to a messenger whom the creditor may have employed to poud for the value of his debt.

In such cases, the law does not permit either the creditor or messenger, at their own hand, to beat up, or break the debtor's doors, but obliges them to apply for a warrant in the king's name for that purpose, which is granted by authority of his judges, and passes under the signet as others of the king's letters do; and the form of such letters of (*Open Doors*) is as follows.

GEORGE, &c. Forasmuch as it is humbly
 meant and shewn to Us by Our lovite,
A. that where the said complainer obtained
 decreet at his instance, before the sheriff
 of ——— against *B.* decerning and ordaining
 him to make payment to the complainer of
 the sum of 100 *l. Sterling* of principal,
 20 *l.* money foresaid of liquidate expences
 incurred through failzie, and annualrent of
 the said principal sum, from ——— con-
 tained in a bond granted by the decest *C.*
 father to the said *B.* to the complainer, da-
 ted ——— whereupon the complainer not
 only raised the said sheriff's precept, but al-
 so, after the days of the said charge were
 expired and elapsed, he caused *D.* messen-
 ger pass upon ——— last to the dwelling
 house

' house of the said *B.* where he has his ac-
 ' tual residence, in order to have apprised
 ' and poinded his moveable goods and gear,
 ' in payment of the foresaid sums contained
 ' in the said decreet and precept, but he could
 ' not have access thereto, by reason that the said
 ' *B.* the debtor, had the doors of his said dwel-
 ' ling house shut and lockfast, purposely to pre-
 ' vent the due course of law, as the said precept,
 ' with the execution of charge, under the hand
 ' of the said *D.* bearing that he was denied
 ' access, as said is, shewn to the Lords of Our
 ' council and session, has testified; wherefore
 ' necessary it is, that the said complainer have
 ' these Our letters direct at his instance, in
 ' manner and to the effect after specified. *Our*
 ' *will is herefore*, and We charge you strictly,
 ' and command, that immediately upon sight
 ' hereof, ye pass, and in Our name and au-
 ' thority, apprise, compel, poind, and distress
 ' the said *B.* his readiest goods, gear, corns,
 ' cattle, horse, nolt, sheep, insight plenishing,
 ' and other moveable goods and gear whatso-
 ' ever poindable, pertaining and belonging to
 ' the said *B.* where-ever the same may or
 ' can be apprehended, to the avail and quan-
 ' tity of the sums of money above mention-
 ' ed, specified in the said sheriff's precept; and
 ' for that effect; if the same be needful, that
 ' ye make shut and lockfast houses, gates and
 ' doors, open and patent, and use Our keys
 ' thereto, according to the order practised

and observed in the like cases, and make the said complainer compleatly paid of the foresaid sums, after the form and tenor of the said decreet, and precept raised thereon, and execution thereof in all points. According to justice, because the Lords have seen the foresaid precept, with the executions thereof, as ye will answer, &c.

Ex deliberatione dominorum concilii.

The letters may be raised either upon production of the precept of any judge ordinary executed, or of letters of horning and executions as aforesaid: But without such letters, it would be unwarrantable in any creditor or messenger to attempt entering the debtor's house against his inclination, even altho' he were sure that the debtor had effects therein, because every man's house is his sanctuary; and if ordinary messengers were allowed to proceed at their own hands in such matters, it might be the foundation of a great deal of tumult, riot and disorder, and greater inconveniencies might arise to the lieges in general, by such a latitude allowed to messengers, than any advantage that could accrue to creditors, by countenancing such summar violence, before it should appear to the judge in a decent and composed manner, that there was necessity to have recourse to this strong method.

REGULA-

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REGULATIONS

I N

ORDINARY CIVIL ACTIONS.

1. **T**HAT no person shall be obliged to appear before the sheriff-court, unless he be cited upon a proper summons, signed by the clerk, and fully libelled.

2. That the officer who executes the summons, shall deliver to the defender, if he find him personally, or, if he find him not, shall leave at his dwelling place a full copy of the libel to the will: That, if there be more defenders than one, each shall be served with a copy of such part of the libel as concerns him; and, in poindings of the ground, the tenants shall be served with short copies, and the proprietor with a full one; the officer's execution always certifying the delivery of such copies respectively.

3. That the two preceeding articles shall not extend to actions for any liquid sum, under thirty shillings *Sterling*, but that, in all such actions, the form of summoning defenders, shall continue and take place, as formerly, subject to such variations as may be made by the several sheriffs, within their respective jurisdictions.

4. That all summonses shall contain only one diet of compearance, and that six free days shall intervene between the day of citation, and the day of compearance, exclusive of both those days; and that the day of compearance shall always be an ordinary court day.

5. That every officer who returns an execution, bearing the defender to have been cited to a different day from that specified in the copy left with the defender, shall be subject to the parties damages, and otherwise punished as the law directs.

6. That

6. That upon the day of compearance, and in all the after procedure, the parties may either appear personally, or by a procurator of court; such procurator, when appearing for a defender, having, in all cases, a written mandate, or being judicially authorised by the defender.

7. That upon the day of compearance, or any after court day, during the currency of the summons, and before litiſt-contestation, the defender may crave protestation against the pursuer for not insisting; and upon producing the copy of citation, and the pursuer's failing to appear and insist, the sheriff shall admit the said protestation; and the protestation money shall be modified by the sheriff, according to circumstances, so as to indemnify the defender for his trouble and expences, besides the expence of extracting the protestation.

8. That the above mentioned protestation shall not be extracted till after the expiry of six free days, after the day of pronouncing thereof, and being extracted, the defender may recover the sums therein contained, by all manner of legal diligence.

9. That, if the protestation be not extracted, the pursuer shall be allowed to call and insist in his action, without the necessity of a new citation, upon paying over to the defender, or his procurator, or, in their absence, consigning in the clerk's hands, for the defender's use, the sum awarded by the protestation, without the expence of the extract.

10. That, in case the protestation be extracted, the pursuer shall fall from that instance, and the defender shall not be obliged to answer, but upon a new summons and citation, upon the ordinary *inducie*.

11. That if the defender be absent, and it appear that the citation was personal, the sheriff shall either hold the defender as confessed, or allow such other proof as the pursuer or his procurator shall desire; but, if the citation be not personal, the sheriff shall, in that case, either decern in absence, or, if demanded, admit the libel to the pursuer's probation.

12. That if, at calling of the cause, the defender or his procurator demand to see the process, in order

to make his defences, the sheriff shall allow the same till the next court day, or may ordain him to see the process, and give in his defences to the clerk of court, against a shorter time, as he shall see cause.

13. That, against the day appointed, the defender shall give in, in writing, all his defences, both dilator and peremptor, which the sheriff shall either advise in court, or allow the pursuer to see and answer, against such a day as he shall appoint; and when answers are given in, the sheriff may either advise the debate as it then stands, or allow the defender a reasonable time to reply; and, after giving in the reply, the debate shall be understood to be concluded, and the sheriff shall proceed to advise the same, unless he think proper to direct further debate, or to appoint informations to be given in.

14. That, after defences have been given in as above, no new defence, unless recently come to knowledge, shall be received, without payment of an amand of one shilling *Sterling*, to be disposed of to the other party, or put to such other use as the sheriff shall think fit.

15. That, upon the day assigned for giving in defences, answers, replies or informations, the process shall be returned to the clerk, by the person who received it, under an amand of one shilling *Sterling*, to be disposed of as above.

16. That improbation against the execution of process, or against any writ, founded upon by either party, shall not be received, unless proponed by the party who makes the challenge personally, or by his procurators specially authorized for that purpose, by a written mandate, and upon consignment of twenty shillings *Sterling*, to be forfeited to the other party, in case the proposer shall afterwards pass from, or fail in his improbation, besides what costs and damage shall be awarded against them, at the conclusion of the cause, and other legal consequences of failing in the improbation.

17. That if, at any time, an oath of calumny be insisted for, when the person of whom it is demanded is not present, the same shall not be admitted, except upon.

upon confignation of two shillings and fixpence *Sterling*, to be forfeited to the other party, in case the oath be thereafter past from, or come out negative of the calumny.

18. That two reclaiming petitions shall be allowed against every interlocutor ; but no after petition shall be received, except upon confignation of one shilling and fixpence *Sterling*, which is to be restored to the configner, by warrant of the sheriff, in case the petition contain matter of importance, come to the petitioner's knowledge, since giving in the former petition, otherwise to be disposed of by the sheriff, as above.

19. That all reclaiming petitions shall be lodged with the clerk, the evening before they are moved in court, otherwise they shall not be received, unless upon payment of one shilling *Sterling*, to be disposed of as above.

20. That when parties differ as to facts, the sheriff, if he find cause, may order both, or either of them, to confess or deny such facts, either personally in court, or by a writing under their hand ; and if the party fail to comply with the order, he shall be held as confest.

21. That when a proof is necessary, the party who insists for it, shall condescend upon his mean of proof, and if it be by the oath of the other party, a day shall be assigned for the said party's appearing and deposing.

22. That in all cases, where the value of the matter in issue exceeds the sum of thirty shillings *Sterling*, no procurator shall be allowed to refer or defer any allegation to the oath of party, unless he be authorised by his client present in court, or by a written mandate from him for that purpose. But, if the value of the matter in issue does not exceed the sum of thirty shillings *Sterling*, such reference or deference may be effectually made by the party's procurator, without the necessity of a written mandate.

23. That if the party do not appear upon the day assigned to him to depone, the term shall be circumstanced against him, and he held as confest ; but, if he do appear,

appear, his oath shall be taken, the other party paying the dues thereof.

24. That, if the mean of proof be by writings, not in the party's hands, or by witnesses, a day shall be assigned for recovering such writings, or for proving by witnesses, and diligences shall be granted for that effect, to be reported against the day assigned.

25. That when the day assigned for the diligence elapsed, the party who obtained it shall report the same; and if he do not, the term shall be circumducted against him: And, if the witnesses do not appear, second diligence shall be granted, on suit of the party, for apprehending and securing them, until they find caution to appear at the time to which the diligence is current.

26. That when the proof is concluded, the cause shall be called, and circumduction granted on the motion of both, or either party.

27. That when a point has been referred to oath of party, and thereafter another mean of proof is demanded, the same shall be allowed, provided the person who made the reference pay, over the bar, the full expences the other party has been put to, by the reference then past from.

28. That no party shall be reponed against a circumduction, except upon a petition, showing cause to excuse his former failure, and upon payment of such sum as the sheriff shall modify, for indemnifying the other party.

29. That where a proof is concluded, and interlocutor pronounced thereon, the sheriff shall not allow any further proof, except upon very weighty reasons shown by the party who applies therefor, and upon payment of an amand to be determined by the sheriff, besides indemnifying the other party as above. But in all cases, the oath of party is to be allowed, if demanded, any time before extracting the decret.

30. That the sum of expences to be given in any decret, whether in absence or *in foro*, shall be fixed specially by interlocutor, and no expences shall be modified of course, nor by a general reference to the conclusions of the libel.

31. That

31. That no decret shall be extracted, till after the expiry of six free days, exclusive of the day upon which it was signed by the sheriff, and of the day of extracting thereof, unless otherways allowep by the sheriff.

32. That in all cases which require extraordinary dispatch, and where the interest of parties might suffer, by abiding the ordinary *induciae*, application, by summary petition, may be made to the sheriff, who will, if he see cause, ordain the petition to be intimated to the defender, and answers to be made there-to, upon such *induciae* as to him shall seem proper; and he will likeways, where it is necessary, pronounce an interdict to be intimated along with the petition.

33. That the clerk shall be authorized to issue out precepts for arrestment, upon producing to him a summons duly execute, or a written document of the debt for which arrestment is sought, the precept always setting forth the ground of the arrestment: And there shall not be granted any blank warrant for arrestment.

34. That when application is made to the sheriff to interpone his authority to a baron's decret, the party, against whom the decret was obtained, shall be regularly cited to hear and see the same interponed, otherwise the sheriff will have no regard to the application.

35. That the clerk shall keep a diet book, in which shall be marked the several judicial steps of process, the acts and decreets: And all causes shall be called and determined according to the order in which they are marked in this diet book.

36. That the diet book shall fix the custody of the process upon the person by whom it is taken out, or to whom it is returned judicially: That the custody of processes, borrowed up from the clerk extrajudicially, shall be fixed by a receipt book, which he shall keep for that purpose.

37. That if a procurator keep up a process, of which he has the custody, longer than is proper, the sheriff, upon application, will grant a caption against him for re-producing the process, and the procurator complained upon shall pay the expence of the caption.

REGULATIONS

RESPECTING

CRIMINAL CAUSES.

1. **T**HAT in all crimes, which by their nature require, that the party accused should be incarcerated before trial, application shall be made to the sheriff by petition, signed by the private party complaining, or by the procurator fiscal, setting forth the nature of the crime; and, upon considering thereof, the sheriff shall grant warrant for apprehending and incarcerating the party informed against, till such time as he shall be liberated in due course of law.

2. That all crimes which infer loss of life, transportation, banishment forth of *Scotland*, or dememoration, and others of great importance, shall only be tried by jury, unless where the contrary is provided by special statute.

3. That in crimes to be tried by jury, the forms of the court of justiciary shall be followed; excepting only, that in all cases, the proof, with the objections to the witnesses, and answers, shall be taken down in writing.

4. That in the trial of crimes without jury, where the form is not directed by special statute, the party accused shall be cited upon a proper summons signed by the clerk, and fully libelled, which summons shall charge the defender to compare *personally*, and to find caution acted in the sheriff books, that he shall make answer to the libel, and appear at all the diets of court.

5. That the officer who executes the summons, shall deliver to the defender, if he finds him *personally*, or, if he does not find him, shall leave at his dwelling house, a full copy of the summons, together with a

list of the names and designations of the witnesses to be adduced against him; that the officer's execution shall certify the delivery of such copy and list, and that six free days shall intervene betwixt the day of the citation, and the day of compearance, exclusive of both these days.

6. That every criminal summons shall contain a warrant for citing witnesses, conform to a list to be signed by the prosecutor, and given in to the clerk, and such witnesses shall be cited to appear on the same day to which the defender is cited.

7. That the defender, against whom any criminal summons is executed, may take out letters of excupation, for proving his defence, if such proof be necessary, which letters the clerk shall be obliged to give out on application of the defender, who shall thereon cause cite his witnesses to appear on the same day to which he is himself cited.

8. That, in all cases which require extraordinary dispatch, the private party aggrieved, or the procurator fiscal, may apply to the sheriff by summary complaint, who will, (if he see cause) ordain the complaint to be intimated to the defender, and him to appear personally in court, and to make answer to the same, upon such *inducie* as the sheriff shall think proper.

9. That if, at the day appointed, the defender appear and the pursuer be absent, the diet shall be declared to be deserted, and the sheriff shall, if the circumstances of the case require it, award full costs, so as to indemnify the defender, which costs may be thereafter recovered by all manner of legal diligence.

10. That if, at the day appointed, the defender do not compear and find caution as above, the sheriff shall grant warrant to apprehend and detain him till he find caution.

11. That, after caution is found, if the defender fail to compear, his bail-bond shall be declared forfeited; and in both cases, whether caution has been found or not, the sheriff may (if the nature of the case admit of it) further proceed to consider the relevancy of the libel, and admit the same to the pursuer's

suer's probation, and to pass such sentence as may be pronounced against a person in absence.

12. That upon the day of compareance, the defender shall either give in all his defences in writing, or shall make answer *viva voce* to the facts contained in the libel; and, upon advising the libel and defences, the sheriff shall either pronounce an interlocutor upon the relevancy, or, in case of difficulty, shall ordain informations to be given in.

13. That, after pronouncing interlocutor upon the relevancy, the sheriff shall forthwith proceed to examine the witnesses adduced, *hinc inde*, upon the facts admitted to probation; but probation by oath of party shall not be allowed in any case where the fact referred has *turpitude* in it, or where the consequence may be more than pecuniary.

14. That if, upon advising the proof, the sheriff shall find the defender guilty of what he is charged with, he shall fine, incarcerate, or inflict corporal punishment, according as the circumstances of the case require, and shall, in all cases, grant warrant for imprisoning the defender, until he shall make payment of the sums decerned against him, or till the day assigned for inflicting the corporal punishment.

15. That no sentence of any sheriff, inflicting capital punishment or demembration, pronounced in any shire lying to the southward of the frith or river of *Forth*, shall be put to execution within less than thirty days after the date of such sentence; and if pronounced in any shire lying to the northward of the said frith or river of *Forth*, it shall not be put to execution within less than forty days after the date of such sentence.

16. That no sentence of any sheriff, importing any corporal punishment less than death or demembration, shall be put to execution within less than twelve days after the date of such sentence; and that in the several cases referred to in this, as well as the preceeding regulation, the respective days upon which sentence is pronounced and executed, shall not be numbered.

17. That the sheriff, or his substitute, shall attend at the ordinary court house, and place of meeting,

yearly, upon the twenty second days of *July* and of *February*, being lawful days, or on the next lawful day thereafter, if these be not lawful days, to receive such informations as shall be offered concerning matters criminal, which have happened within his jurisdiction, and may be tried at the circuit courts.

18. That, if he find any of these informations to be articles of dittay, he shall make up particular accounts of the criminal facts, containing the names and designations of the offenders, the facts committed, with the circumstances of time and place, the names and designations of the witnesses, and the titles of such writs as are to be made use of at the trials.

19. That these informations shall be signed by the sheriff and the clerk, and the clerk shall transmit the same with the first opportunity to the Lord Justice Clerk or his deputies, together with such writs or other evidence or proof, as may be necessary to be made use of in the trial, and that the clerk shall, at the same time, transmit a list of forty five persons, proper and fit to pass upon the assize of criminals.

20. That, in the choice of the assize, care be taken that it be made in such manner, as to be as little burdensome as possible, and without any kind of partiality, and none shall be put upon this service but persons qualified, and in a condition to bear the expence which necessarily attends it.

21. That when the *Porteous* roll and precept for executing it is returned to the sheriff, he shall, without delay, grant warrant to his officers to execute the same.

22. That the sheriff or his substitute, and the officer or officers, who executed the roll, shall attend the circuit court, and bring along with them the roll, together with the executions thereof.

The Fees and Dues of Clerks, and other Officers, in Sheriff and Stewart Courts, in Civil Cases, as regulated by Act of Sederunt, 16th March 1748.

Scots money.

FOR registrating each sheet of hornings, interdictions, inhibitions, and lawburrows, with their executions, to clerk and servants	o 16 6
For an extract of a horning, inhibition, interdiction, or lawburrows, with the execution, for the first sheet, to clerk and servants	o 14 o
Every other sheet	o 12 o
For registrating every sheet of bonds, instruments of protest, tacks, dispositions, and inventaries of heirs entering <i>cum beneficio</i> , and for any other writings given in to be registrate, to clerk and servants	o 14 6
For an extract of the fiars, to clerk and servants	o 8 o
For every libel or summons, where the sum is under forty pound <i>Scots</i> ,	o 6 o
For a libel or summons, where the sum is above forty pound <i>Scots</i> ,	o 12 o
For every precept for summoning witnesses and parties <i>pro confesso</i> ,	o 2 o
Letters of arrestment, or loosing thereof,	o 10 o
For a petition, or answer,	o 6 o
For writing a bond of cautionry	o 12 o
For receiving thereof	o 6 o
For producing an advocacy	o 12 o

For writing of Depositions of Parties and Witnesses.

For every deposition of a party	o 12 o
For each of the first six witnesses	o 12 o
For every other witness	o 6 o
To the clerk, for extracting every decreet not exceeding twenty five pound <i>Scots</i> .	o 12 o

C c c 3

To

- To the clerk, for extracting every decret exceeding twenty five pound, and not exceeding forty pound *Scots*, - - - 1 0 0
- To the clerk, for extracting every decret exceeding forty pound; and not exceeding sixty pound *Scots*, - - - 1 16 0
- For writing and recording each sheet of these decreets - - - 0 6 0
- To clerks and servants, for extracting all decreets, acts, or commissions, in causes exceeding sixty pound *Scots* in value, for the first sheet - - - 1 10 0
- For every other sheet - - - 0 18 0
- But for every repeated sheet of a decret, where any acts or commissions have been extracted, only - - - 0 8 0
- For every sheet of decreets of transumpt - - - 0 14 6
- That each sheet of an extract, written sheet-ways, consist of forty nine lines, at the rate of thirteen words in each line; and if wrote book-ways, that it consist of two pages, and of thirty six lines in each page, and after the rate of nine words in the line.
- That for every appeal entered against any decret, sentence or judgment, there be paid to the clerk, by the appellant, for recording the appeal, and taking the bond of caution - - - 0 12 0
- And that the clerk insert the said appeal in every extract to be thereafter given out by him of such decret, for which his dues are to be paid after the same rate as the rest of the extract.
- And the Lords ordain the said several clerks duly and faithfully to record all the decreets extracted by them, under the highest penalties inflicted by the law on such neglects of duty.
- For a general service, to clerks and servants, drawing the claim, and expeding the ser-

vice, and to officers and witnesses for executing the brieve at the market-cross,	9 0 0
For acts of curatory, and process for making up tutorial or curatorial inventaries, each sheet	3 0 0

For special services as follows.

To drawing the claim, expeding the service, and giving the retour or extract of the service, including officers and witnesses fees for executing the brieves, for the first sheet	9 0 0
For every other sheet	3 0 0

For saines to be paid as follows.

1mo, The current price of the vellum or parchment for the time.	
2do, For the first sheet that it fills up of the clerk's prothoeal as notary	4 0 0
And for every other sheet	3 0 0

That the clerk receive for his pains, for taking the instrument, as follows.

If it is taken at the distance from the clerk's office of three miles, or under, that he be paid for an estate not exceeding two thousand merks of yearly rent	12 12 0
If exceeding two thousand merks, and not exceeding five thousand merks,	25 4 0
If exceeding five thousand merks, and not exceeding ten thousand merks,	37 16 0
If exceeding ten thousand merks, and not exceeding twenty thousand merks,	50 8 0
And for any estate exceeding twenty thousand merks	63 0 0
And no more whatever the estate be.	
If it exceeds three miles, that three pound be paid for every other mile, that the clerk taking the saine, shall be obliged	

to travel, to the place where safine is given, until it amounts to ten miles,	3 0 0
And if it exceed ten miles, for every other mile	1 10 0
For sequestration of a bankrupt tenant's effects, such a sum as shall be judged reasonable by the sheriff, the highest not exceeding	12 0 0
The lowest not under	3 0 0
And for each person qualifying in terms of law, and for the certificate thereof,	1 4 0
For transacted processses and decreets, the one half, of what they would have amounted to if extracted.	
And that services of relicts to their terce pay one half of special services, services of tutory to pay as general services, and services of idiотry and furiosity to pay as general services, and the witnesses to be paid for as in other processses.	
To the officer for summoning a party or witness, or charging to make payment on decret or precept, to himself, and two witnesses to the execution,	0 8 0
But if the parties or witnesses cited or charged exceed three in number, and are within one mile of one another, in that case only for each	0 6 0
<i>Item</i> , For each mile the officer and his two witnesses travel, from the place of his residence, there shall be paid to him a further sum of six shilling, (provided always that the whole sum paid the officer, for himself and his two witnesses, do not exceed half a crown for one day, whatever be the number of miles, or number of parties or witnesses to be summoned)	0 6 0
To the bar-officers that attend the court, for the oath of each party or witness,	0 1 0
For executing of a caption for re-production of a process	0 6 0

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The officer for himself, witnesses and appraisers, &c. to be paid for poidings at the discretion of the party employer, for which the officer assigns him to the sheriff-fee.

Extracted forth of the books of sederunt, by

THO. GIBSONE.

Fees and Dues of the Clerks, and other Officers, in Sheriff and Stewart Courts, in Criminal Cases, as regulated by Act of Adjournal, 21st March 1748.

Scots money.

WHEN a private pursuer, to the procurator-fiscal for his concurrence	0 14 6
For every complaint, and warrant to cite, to the clerk	0 12 0
Every oath of a party, to the clerk	0 12 0
To ditto for an oath of a witness, for the first six each	0 12 0
Every oath above that number	0 6 0
To the clerk, for every petition or answer	0 12 0
To ditto, for letters of intimation or liberation, besides dues of the petition,	0 18 0
To ditto, for petition and information, and warrant of commitment,	1 10 0
For criminal letters, to ditto, for the first sheet	1 10 0
Every other sheet	0 18 0
To bill, and letters of diligence on indictment,	1 10 0
To ditto, for bill, and letters of exculpation,	1 10 0
For a bail-bond from a defender for appearance	1 10 0
To the clerk, from the defender, at deserting the diet,	1 10 0
For recording every sheet of information, either for pursuer or defender,	1 0 0

For every appeal entered against any decree, sentence or judgment, there be paid to the clerk, by the appellant, for recording the appeal, and taking the bond of caution, - - - - -

O 12 0

To the clerks and servants, for extracting decreets, acts or commissions, for the first sheet, - - - - -

I 10 0

For every other sheet - - - - -

O 18 0

That the clerk insert the said appeal in every extract to be thereafter given out by him of such decree, for which his dues are to be paid after the same rate as the rest of the extract.

That each sheet of an extract, written sheet-ways, consist of forty nine lines, at the rate of thirteen words in the line ; and if wrote book-ways, that it consist of two pages, and of thirty six lines in each page, and after the rate of nine words in the line.

To the officer, for summoning a party or witness, to himself, and two witnesses to the execution, his employer furnishing the copy - - - - -

O 8 0

But, if the parties or witnesses cited exceed three in number, and are within one mile of one another, in that case only for each

O 6 0

Item, For each mile the officer and his two witnesses travel from the place of his residence, there shall be paid to him a further sum of six shilling, (provided always, that the whole sum paid the officer, for himself and his two witnesses, do not exceed half a crown for one day, whatever be the number of miles, or number of parties or witnesses to be summoned, and that the employer furnish copies) - - -

O 6 0

To the bar officers that attend the court, for the oath of each party or witness,

O 1 0

To the officer and witnesses, for summoning a whole assize of forty five persons, in

tow

town, or a mile round, the employer furnishing the copies, . . .

2 5 0

Extracted forth of the books of Adjournal, by

JO. DAVIDSON.

By act of adjournal of the High Court of Justiciary, of date the 21st of *July* 1749, all parties who enter appeals, in terms of an act of parliament, of the 20th of his late majesty's reign, intituled, *An act for taking away and abolishing heritable jurisdictions*, &c. are ordained, on or before the first day appointed for holding the circuit courts, in the several stations *respective*, to lodge the said appeals in the hand of the clerk of court, in order to have the same inrolled: With certification, that if parties shall not comply with the directions of the said act of adjournal, such appeals shall not be received, but shall be held as not entered, leaving to the appellant to take such other remedy as accords of law. And it is further declared, that, in these cases, the judges will award such expences to the respondent as they shall see cause.

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Debitor, }

There are many sorts of bonds, whose variety is occasioned by the state of the debtor, who is a

Single person, } for himself, { factor for a constituent,
or } or }
society, } for others, as, { tutor for his pupil.

Or, { Minor with consent of his curator,
with consent of } Party interdicted with consent of interdictor,
others, as, { Wife with consent of her husband.

Whether the debtor be a single person, or society, he is considered as

Principal { one } and these { with } one
or } { or } or
many } { without } many.
a cautioner, }

2. The variety of bonds is occasioned by the state of the creditor, who, if a single person, takes the

{ to the creditor's own } his heirs or assignies,
behoof, extending } or
to } to his own heirs only,
or,
neither heirs nor assignies.

Bond { for the behoof and } 1. Tutor,
ther, as to } 2. Curator,
3. Factor,
4. Administrator, as treasurer or box-master of an incorporation.
for himself and another, as to } Parent and child,
Husband and wife.

3. The variety may arise from the } for payment of money, performance of deeds.

4. Or, Lastly, the variety may proceed from the nature of the security in the { simple or } and both { personal
bond, as, { compound, } these } or real.

All bonds or obligations } full and substantial, or
whateyver, are either } shortened and abridged.

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